Nov 18 1-643 Judge Davis

Submitted.

Passed

Reversed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~262.~~ 5-1

THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY AND MUSCATINE COUNTY, APPELLANTS,

vs.

CHARLES T. CROMWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 16, 1873.

Bradley Dissenting

Reversed

SUPREME COURT OF THE UNITED STATES.

No. 262.

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1 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room in the city of Des Moines, in the State of Iowa and district aforesaid, on the 2nd Monday of May, it being of the 12th day of May, A. D. 1873, before the Hon. John F. Dillon, United States circuit judge, for the eighth circuit, and Hon. James M. Love, United States district judge for said district of Iowa.

2 Be it remembered that heretofore, to wit, on the 28th day of December, 1870, Charles F. Cromwell, by his solicitor, John N. Rogers, filed in the clerk's office of the circuit court of the United States for the district of Iowa, his bill of complaint against Muscatine County, Iowa, which said bill of complaint is in words and figures following, to wit:

3 To the judges of the circuit court of the United States for the district of Iowa.

Charles T. Cromwell, of Rye, in the county of Westchester and State of New York, a citizen of the State of New York, brings this his bill against the Mississippi and Missouri Railroad Company, a corporation organized and established in the State of Iowa under and in pursuance of the laws of said State and the county of Muscatine, in the State of Iowa, a municipal corporation created by the laws of said State.

And thereupon your orator complains and says that the said Mississippi and Missouri Railroad Company is a corporation organized in the year eighteen hundred and fifty-three, under and in pursuance of the provisions of chapter forty-three (43) of the Code of Iowa of 1851 for the purpose of constructing and operating a railroad within the State of Iowa.

That the said county of Muscatine in pursuance of a vote of the inhabitants thereof, adopting a proposition submitted to them by the county judge of said county, (which vote was had on the third

4 day of October, A. D. 1853, and the result of the same, as well as said proposition so adopted, recorded at length in the records of said county judge as required by law,) did, in the year eighteen hundred and fifty-three, in order to aid in the construction of said railroad, subscribe for and take fifteen hundred shares in the capital stock of said railroad company of the par value of one hundred dollars each, which said shares were duly issued to said county, and a certificate therefor executed and delivered to it.

And your orator further shows that afterwards the said county became entitled to, and there were issued to it by said railroad company, two hundred and fourteen additional shares in capital stock of said company, being for scrip issued by said company, convertible into stock for interest accrued upon the parchments made by said county on its subscription as aforesaid, making seventeen hundred and fourteen shares in said capital stock, held and owned by said county; all of which was so held and owned down to the time of the sale and purchase, by your orator, thereof, as hereinafter stated, and all of which stock, since

5 the issue thereof, has stood, and still stands, on the books of the said railroad company in the name of the said county, as the owner thereof.

And your orator further shows that the said railroad company, having constructed a large part of its proposed line of road, and operated the same for a series of years, and having for that purpose borrowed money to the amount of several millions of dollars, and secured the

same by several mortgages on its road, and all other property, failed to pay the interest on its said mortgages, and became and has ever since been utterly insolvent. That in the year eighteen hundred and sixty-six it was divested of title to and possession of its railroad and all other tangible property, by the sale thereof under decree foreclosure of the said mortgages thereon rendered in this court, at the May term, A. D. 1866, to the Chicago, Rock Island and Pacific Railroad Company, which has ever since had possession and control thereof; that since said sale the said Mississippi and Missouri Railroad Company, as your orator is informed and believes, has transacted no business, held no elec-
6 tions for officers, and done no corporate acts, and that it now exists as a corporation only in theory or contemplation of law, (if at all,) for the purpose of winding up its concerns.

That the only value which its stock possesses, consists in the contingent and uncertain of the holder thereof to share pro rata in a certain fund of $550,000, or thereabouts, being a portion of the purchase-money paid for the property of said company, on the aforesaid sale thereof, which portion was by agreement between the holders of the mortgage bonds of said company and the stockholders to have been divided among the said stockholders, and, if so decided, would have enabled them to realize about sixteen per cent. of the par value of their stock. Your orator, however, further shows that the said fund is now in the hands of a receiver thereof, appointed by this court in a certain suit in equity pending therein between Mark Howard and others, complainants, and the Mississippi and Missouri Railroad Company and others, defendants, in which suit a decree has been rendered, appropriating said fund,
7 in the first instance to pay and satisfy certain debts due from the said Mississippi and Missouri Railroad Company to the complainants in said suit.

And your orator further shows that on the 16th day of October, A. D. 1867, one Jared F. Harrison recovered a judgment in this court against the said county of Muscatine and the said Mississippi and Missouri Railway Company for the sum of $6,545\frac{86}{100}$ damages and $31\frac{10}{100}$ costs.

That on the 26th day of October, A. D. 1868, a writ of execution on the said judgment against the property of the said county and of the said railway company, tested the day last mentioned, was issued out of this court, directed to the marshal for the district of Iowa, who, on the 31st day of October, A. D. 1868, under and by virtue thereof, levied on the said seventeen hundred and fourteen shares of stock in said Mississippi and Missouri Railroad Company, owned and held by the said county of Muscatine as aforesaid.

And the said marshal afterwards, to wit, on the 23d day of December, 1868, having first given the notice according to law, did, in pur-
8 suance of said levy, sell the said shares of stock at public auction, at the court-house at Des Moines, in said district, to your orator, he being the best and highest bidder therefor, and did then and there execute and deliver to your orator a certificate of such sale, and assigning and transferring said stock to your orator in pursuance thereof.

And your orator avers that by virtue of said judgment, execution, levy, and sale be became, and ever since has been the lawful owner of said shares of stock, entitled to have the same transferred into his name as such on the books of said railroad company, and to receive and enjoy all the privileges and emoluments rightfully belonging to the owner thereof.

But your orator further represents and shows that the said county of

Muscatine, as your orator is informed and believes, still claims and pretends to be the owner and holder of said stock, and to be entitled to receive its distributive shares of the fund aforesaid, or of the residue thereof, if any, which may be left for the stockholders of said
9 railroad company when the same shall be finally ascertained and distributed; and that by reason of the disorganized condition of said railroad company, and that it has long ceased to do business, or to keep any office open for the transfer of its stock, or to cause or permit any transfer of its stock to be made on its books, your orator has been unable, and is still unable, to procure such transfer of said shares into his own name, although your orator has made a demand on the officers of said company for such transfer, which demand has not been complied with; by reason whereof his title thereto, and to the advantages and emoluments, if any, resulting or to result therefrom, remains unsettled and exposed to be doubted and called in question; and your orator further represents that by reason of the said Mississippi and Missouri Railroad Company having no property whatever which can be reached by execution at law, he has no adequate remedy at law against said company for refusing to transfer said stock into his name on its books.

To the end, therefore, that the said Mississippi and Missouri
10 Railroad Company and the said county of Muscatine may, if they can, show why your orator should not have the relief hereby prayed, and may, upon the corporal oaths of their respective officers, full, true, and perfect answers make to the averments hereinbefore made;

And to the end that by the decree of this honorable court, to be herein made, the title and ownership of your orator in and to the said seventeen hundred and fourteen shares of stock full and clear from any interest thereon of the said county of Muscatine, or any parties claiming, or to claim, under it, may be established and settled, and that the said Mississippi and Missouri Railroad Company may be ordered and decreed to recognize the said title of your orator to said stock by transferring the same into your orator's name on its books, and issuing to him a certificate therefor, and that your orator have such and further relief in the premises as to your honors shall seem meet and as the nature of his case may require:

11 May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said Mississippi and Missouri Railroad Company and to the said county of Muscatine, thereby commanding them and each of them, at a certain day and under a certain pain therein to be specified, to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

And your orator shall ever pray, &c.

CHARLES T. CROMWELL,
By JOHN N. ROGERS,
His Solicitor.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Charles T. Cromwell, being duly affirmed, says that he is complainant in the foregoing bill, and is acquainted with the contents thereof, and the matters therein set forth are true of his own knowledge, except

12 these which are alleged on information and belief, and as to those matters he believes them to be true.

CHAS. T. CROMWELL.

Subscribed and affirmed before me this 15th day of December, A. D. 1870.

SAMUEL I. JONES,
U. S. Commissioner.

(Endorsed:) Filed Dec. 28th, 1870. George B. Corkhill, clerk.

13 And on the same day, to wit, the 28th day of December, 1870, the complainant in said cause filed in said clerk's office his bond for the costs in said suit; which bond is in words and figures following, to wit:

Bond for costs.

U. S. circuit court, district of Iowa.

CHARLES T. CROMWELL
vs.
THE MISS. & MO. R. R. CO. & THE COUNTY of Muscatine.

Know all men by these presents that we, Charles T. Cromwell as principal, and Charles E. Putnam as security, are held and firmly bound unto the above-named defendants, the Mississippi and Missouri Railroad Company and the county of Muscatine, in sum of one hundred dollars, to be paid to the said defendants, to which prayers well and truly to be made on trial, ourselves and each of us, jointly and severally, bound by these presents. Sealed with our seals and dated 27th day of December, 1870.

Whereas the above-named Charles T. Cromwell has commenced
14 an action in said circuit court against the said defendants, the Miss. & Mo. R. R. Co. and the county of Muscatine, in equity: Now, therefore, this obligation is such, that if the above-named Charles T. Cromwell shall discontinue his action, or if it be dismissed or non-pross'd, or judgment pass against him therein, he shall pay all costs adjudged or awarded against him therein, then this obligation shall be void; otherwise to be and remain in full force and virtue.

CHAS. T. CROMWELL, [SEAL.]
Per JOHN N. ROGERS, *his seal.*
CHAS. E. PUTNAM. [SEAL.]

(Endorsed:) Filed Dec. 28, 1870. George B. Corkhill, clerk.

15 And afterwards, to wit, on the 29th day of December, 1870, there was issued from said clerk's office a writ of subpœna, directed to the Mississippi and Missouri River Railroad Company and the county of Muscatine, which said writ of subpœna is in words and figures following, to wit:

16 *Subpœna in chancery.*

UNITED STATES OF AMERICA, *District of Iowa, ss:*

The President of the United States, to the Mississippi and Missouri River Railroad Company and the county of Muscatine.

We command you and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the second Tuesday in May, it being the 9th day of May

next, A. D. 1871, to answer to the bill of complaint to Charles T. Cromwell, a citizen of the State of New York, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa: Returnable to the circuit court on the first Monday, the 6th day of February, A. D. 1871.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the U. S., at Des Moines, this the 29th day of December, A. D. 1870, and of the Independence the ninety-fifth year.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

MEMORANDUM.—The within-named defendant' are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

17 And afterwards, to wit, on the 23d day of January, 1871, said writ of subpœna was returned, by the marshal of said district, and filed in said clerk's office, with service accepted thereon, in words and figures following, to wit:

THE STATE OF IOWA, *Muscatine County, ss:*

The undersigned, members of the board of supervisors of said county, (being the whole of said board,) assented in regular session, and the county auditor of said county hereby acknowledge due, legal, personal service of the within subpœna in chancery on us & in behalf of said county, this third day of January, 1871.

W. H. STEWARD,
Chairman Board of Supervisors Muscatine Co.
J. E. ROBB,
B. CARPENTER,
Supervisors Muscatine Co.
R. M. McCAMPBELL,
Auditor.

I hereby accept service of this notice.

H. PRICE,
Sect. M. & M. R. R. Co.

18 And attached to said subpœna is the following return of service thereon, to wit:

THE STATE OF IOWA, *Muscatine County, ss:*

J. Carskaddan, of said county, being duly sworn, says that on the third day of January, A. D. 1871, he served the annexed subpœna in chancery upon the said county of Muscatine, by reading the same to the board of supervisors of said county in regular session assembled, and by delivering to them a true copy thereof.

J. CARSKADDAN,

Sworn to and subscribed before me this 3d day of January, 1871.
Witness my hand & notarial seal.

[SEAL.] D. C. RICHMAN,
Notary Public.

19 And afterwards, to wit, on the 6th day of Feb'y, 1861, the county of Muscatine, one of the libellants in said cause, by its solicitor, Thos. Hanna, filed in said clerk's office its appearance in said cause, which said appearance is in words and figures following, to wit:

MUSCATINE, IOWA, *Feb.* 4, 1871.

Mr. CORKHILL:

DEAR SIR: Please enter my appearance for the county of Muscatine, in the case of Chas. T. Cromwell *vs.* Muscatine County and the M. & M. R. R. Co. I have arranged with Mr. Rogers for time to answer.

I am truly yours,

THOMAS HANNA.

(Endorsed:) Filed Feb. 6, 1871. George B. Corkhill, clerk.

20 And on the same day, to wit, the 6th day of Feb., 1871, the Mississippi & Missouri R. R. Co., by its attorneys, Messrs. Grant & Smith, filed in said clerk's office its appearance in said cause, which said appearance is in words and figures following, to wit:

Circuit court U. S., dist. Iowa.

CROMWELL *vs.* M. & M. R. R. Co. & MUSCATINE COUNTY. } Bill in equity.

The clerk will please enter in the order-book the appearance of Miss. & Mo. R. R. Co., & that they claim until sec. Monday in March to answer.

GRANT & SMITH,
For Miss. & Mo. R. R. Co.

(Endorsed:) Filed Feb. 6, 1871. George.

21 And afterwards, to wit, on the 1st day of March, A. D. 1871, the county of Muscatine, one of the respondents in said cause, by its attorney, Thomas Hanna, filed in said clerk's office its answer to said bill of complaint, which answer is in words and figures following, to wit:

Answer of the county of Muscatine.

In the circuit court of the United States for the district of Iowa.

CHARLES T. CROMWELL *vs.* THE MISSISSIPPI & MISSOURI R. R. Co. & the county of Muscatine.

The separate answer of the county of Muscatine to the bill of complaint.

Said defendant for answer to so much of said bill as it is advised it is material for it to answer, says: That it is true the Miss. & Mo. R. R. Co. was organized as alleged. It is further true that said county of Muscatine, in pursuance of a vote of its inhabitants, on the 8th day of October, 1853, duly recorded, in order to aid in the construction of said railroad, duly subscribed for fifteen hundred shares in the capital
22 stock of said R. R. Co., and issued the bonds to the amount of

one hundred and fifty thousand dollars; but it is not true that any certificates of stock in said R. R. Co. were duly or at all issued, executed, or delivered to said county; nor is it true that there were afterwards issued to county by said company two hundred & fourteen additional shares in the capital stock of said company for scrip issued by said company for interest accrued on the payment made by said county on its subscription aforesaid; it is not true that all of said certificates of stock of said company, or any part thereof, was held and owned by said county at any time before or since the alleged sale to complainant; nor is it true that *at* any part of said stock has stood and still stands on the books of said Miss. & Mo. R. R. Co. in the name of Muscatine County as the owner thereof. The books of said company may, and probably do, show that said county will be entitled to seventeen hundred and fourteen shares of the stock of said company when said county pays the bonds of said county which are guaranteed by said county. It is true that said R. R. Co. having constructed a large part of the proposed line of road and operated the same for a series of
23 years, and having for that purpose borrowed money to the amount of several millions of dollars, and secured the same by several mortgages on its road and other property, failed to pay the interest on its mortgages and became and have ever since been ut'erly insolvent; that it was divested of its title to and possession of said R. R., and all other tangible property by the sale thereof, under the decree of this court, in May, 1866, on a foreclosure of said mortgages by the sale thereof to the Chicago, Rock Island & Pacific R. R. Co., which has ever since had possession of the same. It may be true this Miss. & Mo. R. R. Co. has transacted no business since, nor had an election of officers, and done no corporate acts except such as relate to closing up its affairs. It may be true that the only value of said stock is the contingent and uncertain right to a pro rata share of about $550,000, but the same is no portion of the purchase-money paid or to be paid at said foreclosure sale, but it is true that said stock is by virtue of an assent to a private sale of said road entitled to about sixteen per cent. of its par value if the same can ever be recovered and collected. It is not true that any portion of the proceeds of the foreclosure is in the hands of a receiver of this court, appointed in the suit of Mauk Howard & others vs.
24 the Miss. & Mo. R. R. Co. and others, but it is true that the sum of five hundred and fifty thousand dollars agreed by a private agreement between the stock and bond holders to be divided among the stockholders assenting thereto, is in the hands of the said receiver, appropriated to pay certain bonds guaranteed by said Miss. & Mo. R. R. Co., and among them the bonds of the county of Muscatine, and among them the bonds on which judgment was obtained through which plaintiff claims title to the stock in controversy. It is true that on the 16th day of October, 1867, one Jared Harrison recovered a judgment in this court against the defendant and the Miss. & Mo. R. R. Co., for $6,565.46 damages and costs, which judgment was recovered for interest on the bonds hereinbefore refer'ed to as owned by this defendant, and guaranteed by said Miss. & Mo. R. R. Co. It may be true that an execution was issued on said judgment, as alleged, and that an attempt was made to levy on & bid off said sha'es of stock by plaintiff, but this defendant says that said pretended sale, if one was made, did not confer any right or title to said stock or any part thereof. That the said stock was not subject to levy and sale; that plaintiff, as this defendant is
25 informed, was one of the attorneys of said Harrison, was interested in said bonds sued on, and paid no money on said pretended

purchase of said stock, so that it is not true that by virtue of the alleged purchase plaintiff became the lawful owner of said shares of stock and entitled to a transfer thereof in his name on the books of said company. This defendant says that when said bonds on which said Harrison recovered this judgment, and others of like nature, were issued the said Miss. & Mo. R. R. Co. in payment of stock, the said Miss. & Mo. R. R. Co., to increase the value of said bonds to the county and said company, with the assent of the county of Muscatine, guarantees the payment of the principal and interest thereof, and said Miss. & Mo. R. R. Co., to secure itself against said guaranty, with the like consent of said county, retained and kept the said stock and said scrip divided as security or indemnity for its guaranty, and neither certificate of stock for the fifteen hundred shares or the two hundred & fourteen shares, was ever delivered to said county or its agent; that in the year 1865 there was a private agreement between the stock and bond holders of said Miss. & Mo. R. R. Co.; that
26 the stockholders assenting to the sale of the said Miss. & Mo. R. R. Co. for five and one-half millions of dollars, should divide among them about five hundred & fifty thousand dollars, which would make about 16 per cent. of the par value of the stock; that John Elliott, Blakely Wilson, & Geo. W. Stanton were appointed a committee or trustees to procure the assent of the stockholders to such sale and procure from the Union Trust Co., of New York, the certificates of the number of shares each holder was entitled to and what he was to receive. That Ebenezer Cook, sec't'y of the Miss. & Mo. R. R. Co. and their keeper of its records, acting for said company, and Henry O'Connor, acting for the county of Muscatine, assented to said sale, and said Union Trust Co. gave to Ebenezer Cook a certificate that said stock was entitled to 16 per cent., and that he has held and still holds the same by assent of said county, to secure said guaranty, all of which was done before said Harrison obtained his judgment against said county. And this defendant further*ing* answering says that judgment have been recovered against said county of Muscatine and the Miss. & Mo R. R. Co. on said guaranteed bonds to an amount much greater than the
27 value of said stock; that in said suit of Howard & others before referred to said Harrison was a plaintiff, which was instituted before the alleged sale on execution of said stock, and in which suit Harrison was allowed both as against this county and said railroad co. the full amount of his bonds, and as against the said Harrison as well as said plaintiff, this defendant has a right to have the whole value of said stock applied to the guaranteed stock, which much exceeds the par value of said stock, and that as against said county said railroad co. and the holders of said guaranteed bonds, plaintiff acquired no right under his sale. Wherefore this defendant prays that said bill be dismissed with costs.

THOMAS HANNA,
For Muscatine County.

I, William H. Stewart, being duly sworn, say I am chairman of the board of supervisors of said county of Muscatine; that I heard the foregoing answer read, know the contents, and from information and belief say I have reason to believe and do believe the statements in this answer are substantially true.

W. H. STEWART,
Chairman Board of Supervisors Muscatine Co., Iowa.

28 STATE OF IOWA, *Muscatine County:*

I, Thomas Hanna, a notary public in and for said county, certify that William H. Stewart subscribed the above answer in my presence and was duly sworn thereto before me on the 28th day of February, A. D. 1871.

Witness my hand and notarial seal the date last above written.

[SEAL.] THOS. HANNA, *N. P.*

(Endorsed:) filed March 1st, 1871. George B. Corkhill, clerk.

29 And afterwards, to wit, on the 4th day of April, A. D. 1871, said complainant, by his solicitor, filed in said clerk's office his replication to the several answers of the respondents in this suit, which replication is in words and figures following, to wit:

Replication.

In the circuit court of the United States for the district of Iowa.

CHARLES F. CROMWELL
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY and the county of Muscatine.

The replication of Charles T. Cromwell, complainant, to the several answers of the Mississippi and Missouri Railroad Company and the county of Muscatine, defendants to said complainant's bill herein.

This complainant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to answer
30 unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this complainant, without this, that any other matter or thing whatsoever in the said answers contained material and effectual in the law to be replied unto, confessed, & avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JOHN N. ROGERS,
Sol. for Complainant.

(Endorsed:) Filed April 4, 1871. George B. Corkhill, clerk.

31 And afterwards, to wit, on the 12th day of May, A. D. 1871, there was filed in said clerk's office an agreement, which said agreement is in words and figures following, to wit:

Circuit court U. S., dist. Iowa.

CROMWELL
vs.
MISS. & MO. R. R. CO., & OTHERS.

The Miss. & Mo. Co. has delivered its answer to us, as attorneys for plaintiff, & we agree to consider it as filed of this day, and reply, demur, or except, at the next rule day after 1st Monday in March, 1871.

Feb. 18, 1871.

J. N. ROGERS,
Plff's Sol'r.

32 And on the 12th day of May, A. D. 1871, the Mississippi & Missouri Railroad Company, by its solicitors, Messrs. Grant and Smith filed in said clerk's office its answer to said bill of complaint, which said answer is in words and figures following, to wit:

The separate answer of the Miss. & Mo. Railroad Company.

Circuit court of the U. S. for district of Iowa.

CHARLES T. CROMWELL
vs.
THE MISS. & MO. R. R. CO. & MUSCATINE CO. } In equity.

This defendant, for answer to so much of said bill as it is advised it is material to answer, says:

That it is true that this defendant is an incorporated company, organized in 1853, under the laws of the State of Iowa, for the purpose of building a railroad within said State. It is also true that the county of Muscatine, by a vote of its inhabitants, on the 3d of October, 1853, which was duly recorded as set forth in said bill, did, in order to
33 assist in the construction of said railroad, subscribe for fifteen hundred shares of stock in said railroad of the par value of one hundred dollars each, which was afterwards paid in the funds of said county, but no certificate of stock was duly issued or delivered to said county therefor. It is also true that a scrip dividend was declared but not issued by said company on said stock for two hundred and fourteen shares convertible into stock for interest on said stock of fifteen hundred shares. It is not true that certificates for either said fifteen hundred shares in said scrip were ever issued by said railroad company or delivered to said county, but said stock & scrip were both retained by said railroad company, as security for the guaranty by said company of the bonds of said county, issued for payment of said stock.

It is true that said railroad company, having constructed a large part of said road, did operate the same for a series of years, and having borrowed money to the amount of several millions, and secured
34 the same by several mortgages on its road and all its other property, failed in 1865 to pay the interest on said mortgages, and became and has ever since been insolvent.

It is not true, in the sense stated in said answer, that in 1866 it was divested of the title and possession of all its tangible property under a decree of foreclosure rendered in this court, at the May term, 1866, and sold to the Chicago, Rock Island & Pacific Railroad Company, but it is true that a foreclosure sale was had, sale made on 9 Aug., 1866, and the Chicago, Rock Island & Pacific Railroad became the purchaser, and remains in possession of the property, and that said Miss. & Mo. Co. has held no election (it has transacted business) since of officers, and that it now exists as a corporation both in theory and in law, for the purpose of winding up its concerns.

It may be true that the only value of its stock consists in the contingents and uncertain right to share pro rata in a certain contingent fund of about 550,000, but it is not true that any portion of said fund is for the purchase-money paid for the property of the company in
35 said foreclosure sale; though it is true that a fund of about that amount is, by agreement of the stock & bond holders, to be divided among the stockholders and would make about 16 per cent. of the par value of the stock, and such a fund, but not from the source

named, is now in the hands of the receiver in the case of Howard & others *vs.* The Mississippi & Missouri R. R. Co. & al., in this court. Said decree has appropriated the stockholders' share under said agreement to pay certain guaranteed debts by the Miss. & Mo. Co., & among them the bonds of Harrison, on which said payment was recovered for interest, against said county as voucher & said Miss. & Mo. Co. as guarantees thereof.

And further answering, this defendant says that said county of Muscatine paid its subscription to said stock of fifteen hundred shares by issuing to bearer its bond to the amount of one hundred and fifty thousand dollars, bearing ten per cent. interest, and in order to make said bonds of more value to said county, this defendant, by agreement with said county, guaranteed the same upon condition that it should
36 have a lien on said stock and its increase as security therefor; the guaranty is indorsed on the bonds, and recites that the stock is held as a security therefor; a copy of said guaranty is hereto annexed, and the agreement to guaranty is among the records of said company, and a copy of that is hereto annexed and both made parts of this answer. The shares of stock belonging to said county were never issued to the county, but were retained by said company as indemnity against said guaranty.

In October, 1865, the stock & bond holders of said Miss. & Mo. Co. proposed to sell said road and its franchises to the Chicago & Rock Island Railroad by private contract for five and a half million of dollars, of which sum of $552,000 was to be divided among each of its stockholders as should assent to such sale, and John Elliott, Blakesly Wilson, George W. Stanton were appointed a committee or trustees to arrange the terms and manner of sale and appoint a trust company to set up the old certificates and give a certificate of what each holder was entitled to receive; and it was a part of the scheme of said private
37 sale that a foreclosure sale should be had, *was* to enable said trustees to convey a good title to the purchasers. In June, 1866, prior to the judgment of said Harrison, Ebenezer Cook, then secretary of said Miss. & Mo. Co., and Henry O'Conner acting for said county, assented for said 1,714 shares of stock to said sale, and the Union Trust Company delivered to Ebenezer Cook a certificate that said shares were entitled to 16 per cent. of said fund; and Cook, as secretary of said company, retained, still retains, said Union Trust Co. certificate to protect the Miss. & Mo. Co. against said guaranty of said bonds.

It may be true that said Harrison on 16 of October, 1867, recovered judgment and issued execution and sold the countie's interest in said stock to the plaintiff, and the marshal gave him a certificate of sale. This defendant refers to said second judgment of said judgment & execution had in this court; the judgment was secured upon or for interest on said guaranteed bonds; said Cromwell, as this defendant is informed, is the attorney of Harrison, & has an interest in said bonds, and paid no money on said sale & foreclosure.

38 And this defendant says that said county of Muscatine claims the proceeds of said shares, under said sale of 1865, subject to the right of this corporation as guarantees of said bonds (and in no other way) to have the proceeds thereof applied to the payment of said guaranteed bonds. Said Harrison recovered his judgment on a portion of them. He is a party-plaintiff in the Howard suit, seeking to recover of this defendant the amount of its guaranty on his, among other bonds, which guaranty now exceeds three hundred thousand dollars. And this defendant says that neither Harrison nor Cromwell has in law or equity

any title to said stock or said Trust Co. certificate, or said dividend of 16 per cent., until this defendant is entirely released from said guarantys; and this defendant, being ordered by said decree to pay a large amount of said guaranteed bonds, is entitled to have the benefit of said 16 per cent., and that upon the payment of its guaranty to the amount thereof the right of Muscatine County, and said Harrison and said Cromwell, will be extinguished, and neither party entitled to anything there-
39 for, and it will in law and equity extinguish the right of said Miss. & Mo. Company to recover back of Muscatine County that much of its guaranty.

Further answering, this defendant says it no longer keeps any transfer-bo*nd* for its stock; the trustees to close up its business keep no transfer-bo*nds*, and the Union Trust Company keep no transfer-book of its certificates of said 16 per cent. And this defendant, having fully amended said bill, prays that the same may be dismissed.

MISS. & MO. R. R.
By J. GRANT, *Sol.*

STATE OF IOWA, *Scott County:*

I, James Grant, declare on oath that I am the attorney of said Miss. & Mo. R. R. Co. to wind up its business, that I have examined the records of said company & Muscatine County in relation to the issues of said bonds, and am as well prepared to answer the allegations of this bill, and that I believe all the allegations of the foregoing answer which I prepared to be true.

JAMES GRANT.

40 Sworn to & subscribed before me, this 18th Feb., 1871, by James Grant to me personally known. Given under my hand & notarial seal of this date.

S. F. SMITH,
Notary Public, Scott Co., Iowa.

[NOTARIAL SEAL.]

41 *Copy of agreement of guaranty.*

At a meeting of the board of directors of the Mississippi and Missouri Railroad Company, held in pursuance of notice at the Tremont House in Chicago, Ills., on the 16th day of June, 1854; present, John A. Dix, president; William Walcott, Joseph E. Sheffield, Henry Farnam, Ebenezer Cook, among other business transacted the following resolution was adopted, (Rec., p. 25:)

"*Resolved*, That the president and treasurer be authorized to guaranty, under the seal of this company, the payment of the bonds issued by Muscatine County, Iowa, to the extent of one hundred and fifty thousand dollars, and the bonds of Mahaska County, Iowa, to the extent of one hundred thousand dollars, on condition that the proceeds of said bonds be applied to the payment of capital stock subscribed by said counties respectively in the Mississippi Railroad Company, and the stock thus subscribed and paid for be held by the treasurer in trust for the payment of the interest and principal to the bondholders, and for the protection of the railroad company, with power to sell the stock or
42 the scrip issued for interest, in case of default: *Provided*, That the president and treasurer shall be satisfied that said bonds have been or shall be issued in accordance with the laws of Iowa: *And provided further*, That they shall have reasonable assurance that the

said counties will subscribe to the capital stock of no other railroad until the Mississippi and Missouri Railroad shall be completed to Oskaloosa, or until the 1st day of January, 1857."

In consideration that the county of Muscatine has transferred to A. C. Flagg, treasurer, in trust the stock of the said county in the Mississippi and Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures and the eventual payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their { SEAL OF MIS. & MO. R. R. CO. } hands and caused the seal of said company to be affixed at New York, this fourth day of September, 1853.

JOHN A. DIX, *President.*

A. C. FLAGG, *Treasurer.*

(Endorsed:) Filed May 12, 1871. George B. Corkhill, clerk.

43 And afterwards, to wit, on the 30th day of May, 1871, it being of the May term, 1871, on the records of the proceeding of said court in said cause there appears the following entry, to wit:

Circuit court of the United States, district of Iowa. May term, 1871.

TUESDAY, *May* 30, 1871.

CHARLES T. CROMWELL *vs.* THE MISS. & MO. R. R. CO., AND MUSCATINE County. } No. 240. Equity.

This cause coming on for a hearing the complt. appears by Jno. W. Rogers and defts. by Hanna, the same is continued.

44 And afterwards, to wit, on the 25th day of October, 1871, it being of the October term A. D. 1871, there appears on the records of the proceedings of said court in said cause the following entry, to wit:

Circuit court of the United States, district of Iowa, October term, 1871.

WEDNESDAY, *Oct.* 25, 1871.

CHAS. T. CROMWELL *vs.* THE MISS. & MO. R. R. CO. ET AL. } No. 240. Eq.

This day this cause, coming on for hearing, it is ordered that the clerk open and file the depositions herein.

45 And afterwards, to wit, on the 27 day of October, A. D. 1871, it being of the October term, 1871, of said court, there appears in the records of the proceedings of said court in said cause the following entry, to wit:

Circuit court of the United States, district of Iowa, October term, 1871.

FRIDAY, *Oct.* 27, 1871.

CHAS. T. CROMWELL
vs.
THE MISS. & MO. R. R. CO. ET AL. } No. 240. Eq.

This cause coming on for hearing, plff. appears by John A. Rogers and defts. by Grant & Smith and Thos. Hanna, the same is continued by consent of parties.

46 And afterwards, to wit, on the 21st day of May, A. D. 1872, it being of the May term, 1872, there appears on the records of the proceedings of said court in said cause the following entry:

Circuit court of the United States, district of Iowa, May term, 1872.

TUESDAY, *May* 21, 1872.

CHARLES T. CROMWELL
vs.
THE MISS. & MO. R. R. CO. ET AL. } No. 240. Eq.

This cause, coming on for hearing, was continued.

47 And upon the trial of said cause, the said complainant, to sustain the issues on his part, introduced and read in evidence certain documents and depositions, of which the following are true copies:

48 *Dedimus potestatem.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To Stephen M. Ostrander, Esq., of New York City, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority to examine Isaac W. Frothingham and Geo. F. M. Davis, on their corporal oaths, as witnesses in a cause depending in the circuit court of the United States for the district of Ohio, wherein Charles T. Cromwell is plaintiff, and the Miss. & Mo. R. R. Company and the county of Muscatine defendants, on the part of the plaintiff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said Isaac W. Frothingham and Geo. F. M. Davis to come before you, and then and there examine them on oath upon the said interrogatories.

That you propound to the said witnesses the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness, and the same to be subscribed by them, and duly sworn to before you. That you take said deposition, in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed,

all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this 15th day of September, 1871, and in the 96th year of the Independence of the United States of America.

Attest:
[SEAL.]

GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

49 U. S. circuit court for the district of Iowa.

CHARLES T. CROMWELL
agt.
THE COUNTY OF MUSCATINE, IOWA, AND THE Mississippi & Missouri Railroad Company.

Interrogatories to be administered for the examination of Isaac W. Frothingham, president of the Union Trust Company of the city of New York, and George F. M. Davis, of the same place, witnesses on the part of the complainant.

First to I. W. Frothingham as follows:

First. What is your age, residence, and occupation?

Second. State whether you are president or other officer of the Union Trust Company, of the city of New York, and how long you have been such president or officer.

Third. State whether, at any time, and when, giving the date as near as you can, you, or the said Trust Company, received from any one, and from whom, two or any certificates of stock in the Mississippi & Missouri Railroad Company, in favor of Muscatine County, Iowa. You state from whom, naming the person, they were received. If so,
50 produce said certificates of stock, & annex them to your deposition in answer to this interrogatory, or allow them to be so annexed. If you cannot annex them, then state the reason, and annex instead a correct copy or copies thereof to your deposition.

Fourth. State whether any receipt or certificate was, or not, given by you or said Trust Co. for said stock, certificate, or certificates.

Fifth. State under what circumstances, for what purpose, and for whose account, said certificates of stock were so left with and received by you, and what passed at the time.

Sixth. If you know of any other matter or thing favorable to complainant, state the same as if particularly thereto interrogated.

To George F. M. Davis as follows:

First. What is your age, residence, and occupation?

Second. Have you been an officer in the Mississippi & Missouri Railroad Co.; and how long, and what office, & for how long, have & did you hold the same in said co.?

Third. Look at the original stock-certificates, in favor of Mus-
51 catine County, which Mr. Frothingham has testified to and now produced in your presence, and say by whom they were signed, and whether the persons so signing the same was at the time the proper officers duly authorized to sign the same at the date of said certificates. Do you know their signature, are you acquainted with their handwriting, and are such signatures the handwriting of said officers? What offices did those signers hold in the Mississippi & Missouri Railroad Compy.?

Fourth. If you know of any other matter or thing favorable to complainants, state the same particularly as if thereto interrogated.

PUTNAM & ROGERS,
Plff. Atty.

I consent to issue a commission in this case without notice.

GRANT, *for Deft.*
THOS. HANNA,
Atty. for County of Muscatine.

52 United States circuit court for the district of Iowa.

CHARLES T. CROMWELL
agst.
THE COUNTY OF MUSCATINE, IOWA, AND THE Mississippi & Missouri Railroad Company.

Deposition of Isaac H. Frothingham and George F. M. Davis, taken before me, Stephen M. Ostrander, at the city of New York, in the county and State of New York, pursuant to the annexed order and commission, to be read in evidence in behalf of the plaintiff in an action pending in the United States circuit court for the district of Iowa, in which Charles T. Cromwell is plaintiff and the county of Muscatine, Iowa, and the Mississippi & Missouri Railroad Company are defendants.

ISAAC H. FROTHINGHAM, being by me first duly sworn, deposes and saith as follows:

First interrogatory. What is your age, residence, and occupation?

Ans. My age is 64; my residence, Brooklyn; occupation is president of the Union Trust Company of New York.

53 Second interrogatory. State whether you are president or other officer of the Union Trust Company of the city of New York, and how long you have been such president or officer?

Ans. I am such officer as stated above, and have been such officer since the origin of the company.

Third interrogatory. State whether at any time, and when, giving the date as near as you can, you or the said trust company received from any one, and from whom, two or any certificates of stock in the Mississippi and Missouri Railroad Company in favor of Muscatine County, Iowa. If so, state from whom, naming the person, they were received. If so, produce said certificates of stock, and annex them to your deposition in answer to this interrogatory, or allow them to be so annexed. If you cannot annex them, then state the reason, and annex instead a correct copy or copies thereof to your deposition.

Ans. I issued a receipt on July 26, 1866, of which the following is a copy:

"The certificate of stocks above described were deposited in this
54 office for the county of Muscatine on or about the 25th day of June, 1866.

(Signed) "UNION TRUST CO.,
"By I. H. FROTHINGHAM,
"*President.*"

A copy of the certificate of stocks referred to in the foregoing receipt are hereto annexed, marked A & B. The stock certificates were deposited in this office by the party and for the purpose as stated in the foregoing receipt. The reason for not annexing the original certificates is, that the company of which I am president is acting as agents for other parties and cannot deliver up the originals.

Fourth interrogatory. State whether any receipt or certificate was or not given by you, or said trust company, for said stock certificate or certificates.

Ans. The receipt, of which a copy is given above, in answer to the third interrogatory, is all the receipt which was given for those certificates.

Fifth interrogatory. State under what circumstances, for what
55 purpose, and for whose account said certificates of stock was so left with and received by you, and what passed at the time.

Ans. They were left here for the purpose of obtaining a receipt which would entitle the holders of the stock to a dividend of 16 per cent., payable in bonds to be thereafter issued by the Chicago, Rock Island & Pacific R. R. Co. Nothing else passed that I know of at the time.

Sixth interrogatory. If you know of any other matter or thing favorable to complainant, state the same as if particularly thereto interrogated.

Ans. I don't know that I know anything else.

I. H. FROTHINGHAM, *Pres't.*

Subscribed and sworn to before me this 21st day of Sept., A. D. 1871, at the city of New York.

STEPHEN M. OSTRANDER,
Notary Public, N. Y.

56 STATE OF NEW YORK,
City & County of New York, ss:

I, Stephen M. Ostrander, the commissioner authorized by the annexed commission to take the depositions of the witnesses therein named, do hereby certify that I was attended by the witnesses I. H. Frothingham, at the city of New York, on the 21st day of September, A. D. 1871, who,

on that day, read over, swore to, and subscribed to the foregoing depositions, and that the Exhibits A and B are copies of the original certificates produced by Mr. Frothingham at the time of taking his deposition, and that the said interrogatories and answers were written out by me.

STEPHEN M. OSTRANDER,
Notary Public, and Commissioner under the annexed Commission.

57 A.

MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

No. 459.—1,500 shares.

This certifies that the county of Muscatine, Iowa, are entitled to fifteen hundred (1,500) shares of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable in person or by attorney on the books of the company at the office of the treasurer in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate.

In witness whereof the said company have caused this certificate to be signed by their president and treasurer, dated at the transfer office in the city of New York this 23d day of June, 1859.

JOHN A. DIX, *President.*

F. H. TOWS,
Treasurer pro tem.

(Written across the face:) State of Iowa. The county bonds for which this stock was issued are by the vote authorizing the same convertible into said stock. Shares $100 each.

The foregoing is Exhibit A produced before me Sept. 21st, 1871.

S. M. OSTRANDER, *Commissioner.*

A true copy. Attest:

I. H. FROTHINGHAM, *Pres't.*

(Endorsed:) For value received the undersigned hereby assign
58 and transfer unto shares of the capital stock of the Mississippi & Missouri Railroad Company, and do hereby constitute and appoint true and lawful attorney, irrevocable for and in name and behalf to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof ha hereunto set hand and seal this day of 185 .

Sealed and delivered in presence of—

59 MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

No. 112.—214 shares.

This certifies that Muscatine County is entitled to two hundred & fourteen (214) shares of one hundred dollars each in the Mississippi & Missouri Railroad Company, transferable in person or by attorney on the books of the company at the office of the treasurer in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate.

In witness whereof the said company have caused this certificate to be signed by their president and treasurer, dated at the transfer office in the city of New York this 18th day of Feb'y, 1857.

JOHN A. DIX, *President.*

A. C. FLAGG, *Treasurer.*

The foregoing is Exhibit B produced before me Sept. 21, 1871.

S. M. OSTRANDER, *Commissioner.*

(Written across the face:) State of Iowa. Shares $100 each. A true copy. Attest:

I. H. FROTHINGHAM, *Pres't.*

(Endorsed:) For value received the undersigned hereby assign
60 and transfer unto shares of the capital stock of the Mississippi & Missouri Railroad Company, and do hereby constitute and appoint true and lawful attorney, irrevocable for and in name and behalf to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof ha hereunto set hand and seal this day of , 185 .

Sealed and delivered in presence of—

61 GEORGE F. M. DAVIS, being by me first duly sworn, deposes and saith as follows:

First interrogatory. What is your age, residence, and occupation?

Ans. I am 61 years of age. I reside in the city of New York. My occupation is railroad commission merchant.

Second interrogatory. Have you been an officer in the Mississippi & Missouri Railroad Company, and how long and what office, and for how long have you or did you hold the same in said company?

Ans. I have been an officer in the company for the last 8 or 9 years; as a director at first, and succeeded Mr. Flagg in the office of treasurer. I am still both a director and treasurer in the company so far as the same exists.

Third interrogatory. Look at the original stock certificates in favor of Muscatine County, which Mr. Frothingham has testified to and now produced in your presence, and say by whom they were signed, and whether the persons so signing the same were at the time the proper officers duly authorized to sign the same at the date of said
62 certificates. Do you know their signatures, are you acquainted with their handwriting, and are such signatures the handwriting of such officers? What office did those signers hold in the Mississippi & Missouri Railroad Company?

Ans. I have examined the certificates and am acquainted with the handwriting of John A. Dix, F. H. Lowe, and Mr. A. C. Flagg, by whom said certificates are executed, and each are the proper signatures of each of those gentlemen. John A. Dix is the president, and was such president at the date of each of the certificates, and duly authorized to sign the same. Mr. Flagg was the treasurer on the 18th day of February, 1857, and duly authorized to execute the certificate at the date hereof. F. H. Tows was treasurer pro tem. on the 23d day of June 1859, and was duly authorized to sign said certificate marked A.

Fourth interrogatory. If you know of any other matter or thing favor-

able to complainant, state the same particularly as if thereto interrogated.

63 Ans. I know nothing more than what I have said.

GEO. F. M. DAVIS.

Subscribed & sworn to before me this 22d day of Sept., A. D. 1871.

STEPHEN M. OSTRANDER,
Notary Public, N. Y.

STATE OF NEW YORK,
City & County of New York, ss:

I, Stephen M. Ostrander, the commissioner authorized by the annexed commission to take the deposition of the witnesses therein named, do hereby certify that I was attended by the witness George F. M. Davis, at the city of New York, on the 22d day of September, 1871, who on that day read over, swore to and subscribed to the foregoing deposition, and that said interrogatories & answers were written out by me.

STEPHEN M. OSTRANDER,
Notary Public, and Commissioner under the annexed Commission.

(Endorsed:) Opened by consent of parties and filed Oct. 23d, 1872. George B. Corkhill, clerk.

(4.)

64 UNITED STATES OF AMERICA,
District of Iowa, ss:

At a term of the circuit court of the United States for said district, begun and holden at Des Moines on the second Tuesday, being the 12th day of May, A. D. 1868.

Present, the Hon. James M. Love, district judge.

MARK HOWARD AND JOHN WEBER, COMPLAINANTS, and Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vandever, Wm. Elliott, George Bliss, Betsy Tracy, Harriet Le Conte, Margaret J. Nisbet, Joseph W. Clark, Volkert P. Douru, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants, joining in the bill,	In chancery. No. 69.
vs.	
THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, the Chicago and Rock Island Railroad Company, the Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakely Wilson, the city of Muscatine, the city of Iowa City, and the county of Scott, defendants.	

65 This cause came on to be further heard at this term, to wit, on the 6th day of June, A. D. 1868, upon the report of Asbel M. Bennett, esq., the master to whom the same was referred by an order made therein at the October term, A. D. 1867, and thereupon all the parties appearing by their respective solicitors except the Mississippi & Missouri Railroad Company, and exceptions having been taken to said

master's report by the said Chicago, Rock Island and Pacific Railroad Company & the said Stanton, Wilson, & Elliott, and the court having considered the same, doth overrule said exceptions; whereupon, on motion of complainant's solicitors, it is ordered that said report be, and the same is hereby, in all things confirmed.

And thereupon the said cause, coming on for final hearing, & having been argued by counsel, the court being fully advised in respect thereto, doth order, adjudge, and decree as follows, to wit:

That the complainants and the said other parties who had come in and joined in the prosecution of the suit are entitled, as creditors of the said Mississippi and Missouri Railroad Company, to so much
66 of the purchase-money or consideration of five million five hundred thousand dollars, ($5,500,000,) for which the railroad and other property of the said Mississippi and Missouri Railroad Company was sold under and by virtue of the terms of the contract of 1st November, A. D. 1865, between said Mississippi and Missouri Railroad Company and said Chicago and Rock Island Railroad Company, as was agreed and intended on said sale to be reserved and distributed among the stockholders of said Mississippi and Missouri Railroad Company, to wit, the sum of five hundred and fifty-two thousand three hundred and twenty dollars, ($552,320,) being equal to sixteen per cent. on the par value of the capital stock of said Mississippi and Missouri Railroad Company, to the same extent that the Mississippi and Missouri Railroad Company or its stockholders would have been entitled to the same in the absence of any claim thereon by such creditors, and subject to the same limitations and deductions, & no other, to which the said Missis-
67 sippi and Missouri Railroad Company or its stockholders would be subject. That any deficiency in the said purchase-money or fund of five million five hundred thousand dollars, ($5,500,000,) after payment thereout of the charges & expenses of foreclosure and sale of the said railroad, and of making title thereto to the said Chicago, Rock Island and Pacific Railroad Company, amounting to the sum of fifty-eight thousand dollars, ($58,000,) to pay in full the several sums or dividends so agreed to be paid or distributed to the holders of the several classes of mortgage-bonds of the said Mississippi and Missouri Railroad Company and to the stockholders of the said railroad company, must be borne by said bondholders and stockholders, and the complainants and other creditors joining herein as succeeding the rights of said stockholders pro rata and in proportion to the respective amounts so agreed to be distributed among them. That such deficiency exists, and amounts to the sum of one hundred thousand six hundred and eighteen dollars, ($100,618,) and that the proportion thereof which should be
68 charged upon and borne by the said complainants and which should be deducted from the said sum of five hundred and fifty-two thousand three hundred and twenty dollars ($552,320) coming to them in the sum of ten thousand seven hundred and ninety-three dollars, ($10,793,) leaving the net sum of five hundred & forty-one thousand five hundred and twenty-seven dollars, ($541,527,) to which the complainants and others joining with them are entitled, with interest thereon at seven per cent. per annum from the first day of December, A. D. 1865.

It is therefore further ordered, adjudged, and decreed, that the said Chicago, Rock Island and Pacific Railroad Company do pay over and deliver forthwith unto B. F. Allen, the receiver heretofore appointed in this cause, the said sum of five hundred & forty-one thousand five hundred and twenty-seven dollars, ($541,527.00,) which payment shall be made either in cash or in the bonds of said company,

constituting and being part of its bonds to the amount of nine million dollars, ($9,000,000.00,) bearing interest at seven per cent. per annum, payable semi-annually, & secured by first mortgage on the entire
69 line of the railroad of said consolidated company, its franchises & depots, from Chicago to Des Moines, and the Oskaloosa Branch thereof, as provided by contract of sale between the said Mississippi & Missouri Railroad Company & the Chicago & Rock Island Railroad Company, dated November 1st, A. D. 1865, which said bonds shall be taken and received in such payment at the par value of the principal sum secured to be paid thereby.

That upon so much of said five hundred and forty-one thousand five hundred and twenty-seven dollars ($541,527.00) as it shall pay to said receiver, in cash, it do further pay to said receiver, in cash, interest from Dec. 1st, A. D. 1865, at seven per cent. per annum, down to the time of such payment; and that on so much of said sum of five hundred and forty-one thousand five hundred and twenty-seven dollars ($541,527.00) as it shall pay in said bonds it further pay to said receiver, in cash, interest at said rate from Dec. 1st, A. D. 1865, to the day from which said bonds, on their face, bear or carry interest; and shall also
70 pay in cash to said receiver the interest which shall at the time of such payment have accrued and become due on said bonds from the day last aforesaid, as represented by the coupons attached to said bonds.

And it is further ordered and decreed, that said receiver do proceed to convert the said bonds so received by him into money, by the sale thereof at public sale, at the stock-exchange at the city of New York, at not less than the current market-price of said bonds at said stock-exchange, at such time as the receiver may think proper for the best interest of the parties concerned; but before any such sale said receiver shall first notify the said parties, their agents or attorneys, of the time of said sale & the amount to be put on the market at any one time, & shall also give five days' public notice of said sale in a daily newspaper published in the city of New York.

That from the fund so realized & in his hands he first pay and satisfy the costs of all the parties to this suit, together with his own costs and charges in the execution of this decree, to be settled & allowed by the court or a judge thereof.

That after payment of said costs and charges he shall apportion
71 the fund remaining in his hands among the said several complainants & claimants, joining with them herein pro rata in proportion to the amounts of their said claims, as ascertained by the said master's report herein, both matured & not matured, and which said amounts are as follows, to wit:

To Mark Howard the sum of four thousand four hundred & four & $\frac{22}{100}$ dollars, ($4,404.22.)

To John Weber the sum of ten thousand and two & $\frac{59}{100}$ dollars, ($10,002.59.)

To Joseph Young the sum of five hundred & sixty-two thousand four hundred & twenty-eight & $\frac{90}{100}$ dollars, ($562,428.90.)

To Clark Durant the sum of thirty-six thousand five hundred & sixty & $\frac{93}{100}$ dollars, ($36,560.93.)

To Charles W. Durant the sum of twenty-four thousand one hundred and twenty-eight & $\frac{14}{100}$ dollars, ($24,128.14.)

To Robert Murray the sum of eleven thousand eight hundred & fifty-one & $\frac{97}{100}$ dollars, ($11,851.97.)

To Henry Vandever the sum of eight thousand six hundred and thirty seven & $\frac{42}{100}$ dollars, ($8,637.42.)

To Wm. Elliott the sum of eleven thousand two hundred and thirty-nine & $\frac{70}{100}$ dollars.

To George Bliss the sum of thirty-eight thousand one hundred and sixty-six $\frac{04}{100}$ dollars, ($38,166.04.)

72 To Betsy Tracy the sum of twenty-one thousand nine hundred and eighty-four & $\frac{06}{100}$ dollars, ($21,984.06.)

To Harriett Le Conte the sum of twenty-one thousand three hundred and eighteen & $\frac{75}{100}$ dollars, ($21,318.75.)

To Joseph W. Clark the sum of twelve thousand seven hundred and twenty & $\frac{50}{100}$ dollars, ($12,720.50.)

To Volkert P. Doum & Christopher Y. Lansing the sum of fifteen thousand seven hundred & ninety-four & $\frac{08}{100}$ dollars, ($15,794.08.)

To Margaret J. Nisbit the sum of eight thousand two hundred & seventy two & $\frac{60}{100}$ dollars, ($8,272.60.)

To Jared F. Harrison the sum of fourteen thousand five hundred and twenty-two & $\frac{48}{100}$ dollars, ($14,522.48.)

That from the said fund, so apportioned and set apart to each of said parties, the said receiver shall first pay to said party, in full, (so far as the fund so set apart to him will go,) the amount of his claim now matured and due, as ascertained by such report, together with any additional amount which shall have matured and become due at the time of said payment, in the following order, viz: He shall first pay in full, or so far as

73 such fund will go, any judgment or judgments of such party, if any. Out of the remainder of such money, if any, he shall next pay in full, or so far as such fund will go, any and all coupons which are due on the bonds held by such party; & out of the remainder of such funds, if any, he shall next pay in full, or so far as such funds will go, the principal of any bond or bonds which are matured and due; and in case the amount of such matured bonds exceed the sum so applicable to their payment, then he shall pay in full such part of said bonds as said sum shall be sufficient to pay; and the remainder of the fund so apportioned and set apart to each of said parties shall in like manner be applied from time to time by said receiver to the payment of such party of the amounts which shall hereafter become due & remain unpaid for either interest or principal on his or her respective claims as and when the same shall fall due: provided, that if said George W. Stanton, jr., John Elliott, Blakeley Wilson, trustees, shall file with said receiver their written consent thereto, said receiver shall apply the said

74 remainder or residue of the sum so set apart and appropriated to any of said parties who shall consent so to receive the same in payment and satisfaction, so far as the same will go, of the principal sum or sums so secured, to be paid by the said guaranteed bonds held by them respectively, though not yet matured, they rebating all future interest thereon to the extent of such payments.

That before such payments are made each of such parties shall produce & deliver to said receiver a written statement, certified by the clerk of the court to be correct, of the parties, date, and amount of such judgment of which he claims payment; and shall also produce and deliver to the receiver all coupons and bonds which are due and which may be paid in full, together with a receipt for such payment; and shall deliver to him a receipt stating the amount which is paid in any judgment-bond or coupon, which may be paid only in part, describing the same, so that it may be identified; and in case of such partial payment, when made, the receiver shall endorse upon such bond a state-

75 ment of the amount so paid by him, and that the same was paid

from funds in his hands as receiver; & all bonds and coupons shall be produced to him for such indorsement before such payment shall be made thereon; and the receiver shall file with the clerk of the court in which the judgment so paid in part is entered a statement of the amount so paid by him thereon, and that the same was paid from funds in his hands as receiver, which statement shall by said clerk be filed and preserved among the papers in the cause.

And it is further adjudged and decreed, that the shareholders of the Mississippi and Missouri Railroad Company who would be entitled to a distribution of said fund, according to the agreement of November 1st, 1865, and subsequent agreements between the stockholders and bondholders of the Mississippi and Missouri Railroad Company and said Stanton, Elliott, and Wilson, and who would have been entitled to said fund but for the claims of the creditors of the said Mississippi and Missouri Railroad Company be, and they are hereby, subrogated to all the rights, claims, and remedies of the parties plaintiff, respectively, in
76 and upon each and all of such judgments, coupons, and bonds, as and when the same shall be so paid in full, against the several municipal corporations, which are the principal debtors on such bonds and judgments.

That such judgment shall remain in full force and effect against such corporations for the benefit of said share-holders, who may enforce the collection of the same, in the name of the plaintiffs therein or otherwise, but at their own cost and charges, by any process, remedy, or proceeding, which said plaintiffs might have had for their own benefit; that any and all proceedings which may have been instituted by any of said parties, for the collection of said demands, shall remain and inure to the benefit of said shareholders, who shall be entitled to hold and continue the same in their own behalf; & to this end the plaintiffs, respectively, on the payment of such judgments by the receiver, shall execute, acknowledge, and deliver to him an assignment of each judgment so paid, and the receiver shall, on the payment of the same, deliver to the lawfully-constituted and authorized trustees or agents of said sharehold-
77 ers such assignments of said judgments, & shall also deliver to them all coupons and bonds which shall have been paid in full, as above directed.

And it is further ordered, adjudged, and decreed that if, after payment in full to any of said parties by said receiver of all sums which said party shall be entitled to have paid to him out of said funds according to the directions hereinbefore given, there shall remain in said receiver's hands any proportion of said fund set apart and proportioned to such party as hereinbefore directed, the same shall be reported by said receiver to the court, & held subject to such further order and direction as may be made by the court in respect to the disposition thereof.

And therefore the said Chicago, Rock Island and Pacific Railroad Company, and the said George W. Stanton, jr., John Elliott, & Blakely Wilson, by their solicitors, pray an appeal from this decree to the Supreme Court of the United States, and it is allowed them on their giving bond with sureties in the penal sum of five hundred dollars, (500.00,) as provided by law for the costs of the appeal: provided, that in order to supersede and stay execution of said decree pending such appeal,
78 they shall give bond with sureties conditioned and to be approved as provided by law in the penal sum of eight hundred thousand dollars, (800,000.00.)

(Signed) J. M. LOVE, *Judge.*

Attest:

(Signed) W. G. WOODWARD, *Clerk.*

79 In U. S. circuit court, dist. of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing is full, true, and complete copy of the decree in the case of Mark Howard et al. against the City of Davenport & others, as full, true, and complete as the original of the same now remains of record in my office.

In testimony whereof I hereto subscribe my name and affix the seal of the said court at my office, in Des Moines, in said district, this 17th day of Nov., A. D. 1871.

[SEAL.] (Signed) GEORGE B. CORKHILL,
Clerk Cir. Ct. U. S. Dist. of Iowa.

(Endorsed:) Filed Oct. 30, '72. George B. Corkhill, clerk.

80 U. S. cir. ct. f'r Iowa.

CHARLES T. CROMWELL *agt.* MUSCATINE COUNTY, IOWA, & OTHERS.

It is hereby stipulated that the two certificates of stock in the Mississippi & Missouri Railroad Co., in favor of Muscatine County, referred to in the pleadings in this case, and now in the possession of the Union Trust Co., of New York, may be read in evidence on the trial of this action, or copys thereof may be read upon the same being certified to be correct copies of the original certificates by the president of the said Union Trust Company; also, a copy of the agreement between stockholders & bondholders of the Miss. & Mo. R. R. Co. and George W. Stanton, Blakely Wilson, and John Elliott, known as the "Peter M. Myers agreement," with so much of the signatures thereto as relates to said stock held by Muscatine County.

Also copies of entries in the stock-ledger, transfer-book, & other books, if any, of the Miss. & Mo. R. R. Co., showing in whose name said stock stood.

GRANT & SMITH, *for Dfts.*
J. N. ROGERS, *for Plff.*

81 *Stock-ledger, p. 363.*

A. C. FLAGG, TREAS., IN TRUST FOR MUSCATINE CO.

1857.		1857.	
July 24.	To re-issue c't'f. No. 319 1,500	M'ch 1.	By transfer from folio 10 300
1859.		" " " " "	900
June 23.	" Co. of Muscatine, 347 1,500	" " " " "	50
		" " " " "	250
		July 24.	" final c't'f 1,500

MUSCATINE COUNTY, p. 352.

		1857.	
		Feb. 18.	By Dav. scrip 112 214
		1859.	
		June 23.	" H. Tows, treas M. & M., 459.... 1,500
			1,714

82 In U. S. circuit court, district of Iowa.

SCOTT COUNTY, *ss:*

I, Chas. E. Putnam, of said county & State, being first duly sworn, do upon oath say that, on or about the 31st day of August, A. D. 1871, at Davenport, Iowa, I applied to Mr. Ebenezer Cook, then an officer in the Mississippi & Missouri Railroad Company, and having the books of

said corporation in his keeping, for permission to examine the stock-account kept with Muscatine County, Iowa; that said Cook then and there produced the same; that the book so produced was entitled "Stock-ledger," and I was informed by Mr. Cook it was the original and only stock-book of said corporation; that I copied from said stock-book the accounts kept with the said county of Muscatine, and that the annexed account is a full and exact transcript thereof, as I verily believe.

CHAS. E. PUTNAM.

Subscribed & sworn to by said Chas. E. Putnam, before me, this 24th day of Oct., A. D. 1872, as witness my hand & notarial seal.

[SEAL.] J. HOWARD HENRY,
Notary Public, Scott Co., Iowa.

83 *Relating to Muscatine County stock in Mississippi and Missouri Railroad Company.*

STATEMENT.

The county of Muscatine subscribed for one hundred and fifty thousand ($150,000) dollars capital stock Oskaloosa division, and issued its bonds in payment for same amount.

On the 16th day of June, 1854, the following resolution was adopted by the board of directors of the railroad company:

Resolved, That the president and treasurer be authorized to guaranty, under the seal of this company, the payment of the bonds issued by Muscatine County, Iowa, to the extent of one hundred and fifty thousand dollars, and the bonds of Mahaska County, Iowa, to the extent of one hundred thousand dollars, on condition that the proceeds of said bonds be applied to the payment of capital stock subscribed by said counties respectively, in the Mississippi and Missouri Railroad Company; and that the stock thus subscribed and paid for, be held by the treasurer in trust for the payment of the interest and principal to the bondholders and for the protection of the railroad company, with the power to sell the
84 stock or the scrip issued for interest, in case of default, provided that the president and treasurer shall be satisfied that said bonds have been or shall be issued in accordance with the laws of Iowa; and provided further, that they shall have reasonable assurance that the said counties will subscribe to the capital stock of no other railroad until the Mississippi and Missouri Railroad shall be completed to Oskaloosa or until the 1st day of January, 1857.

The stock was originally issued to A. C. Flagg, treasurer in trust, in scrip, bearing interest, and in certificat's, as follows:

No. 154, three hundred shares.
" 155, nine hundred shares.
" 156, fifty shares.
" 157, two hundred and fifty shares.

On the 24th July, 1857, these certificates were surrendered and a final certificate, No. 319, issued to Flagg, treasurer as aforesaid, for fifteen hundred shares.

On the 23d June, 1859, the board of directors at a regular meeting adopted the following resolution:

Resolved, That the certificate No. 319 for 1,500 shares of the stock of the Miss. & Mo. Railroad Company, heretofore issued to the
85 treasurer of this company in trust, be cancelled, and that the

treasurer be authorized and required to issue a new certificate for said stock to the county of Muscatine, and endorse on said certificate the words "The county bonds of which this stock was issued are, by the vote authorizing the same, convertible into said stock."

In pursuance of that resolution, F. H. Tows, then treasurer, transferred the 1,500 shares to the county of Muscatine, and certificate No. 459 was issued to the county of Muscatine.

The interest on the stock issued on the Oskaloosa division was computed at the office in Davenport, and the amount found due Muscatine County was twenty-one thousand and four hundred ($21,400) dollars, and for that a certificate was issued to Muscatine County; and afterwards, on the 18th day of February, 1857, that certificate was surrendered at the office in New York, and New York certificate, No. 112, for two hundred and fourteen shares, was issued to Muscatine County.

The foregoing statement is made from the books of the M. and M. Railroad Company.

86 In June, 1866, Henry O'Connor came to New York as the agent, as he told me, of Muscatine County, with these certificates of stock, and at his request I took them to the Union Trust Company and surrendered them under what is known as the Meyers agreement, and supposed I must have received therefor the receipt of the Union Trust Company in the usual form, but upon inquiry to-day Mr. Sherman tells me that he does not find from the books that any such receipt was issued.

I recollect there was a difficulty about the matter, owing to some suit, attachment, or notice having been served upon the Union Trust Company.

Davenport, August 31, 1871.

EBENEZER COOK.

I agree this may be read in evidence same as a deposition.

GRANT, *for Miss. & Mo. Co.*
THOMAS HANNA,
For Muscatine County.
J. N. ROGERS, *for Plff.*

87 (Copy.)

Rec'd, Davenport, June 14th, 1866, from Henry O'Connor, atty. for the county of Muscatine, certificate of capital stock in the Mississippi & Missouri Railroad Company for seventeen hundred & fourteen shares, amounting nominally to one hundred and seventy-one thousand four hundred dollars, to be by me deposited for said county with the Union Trust Company of New York, in pursuance of a certain agreement made between George W. Stanton, jr., John Elliott, and Blakely Wilson, committee, and the stock and bond holders of the Mississippi and Missouri Railroad Company.

(Signed) EBENEZER COOK.

UNION TRUST CO.'S OFFICE,
New York, July 26th, 1866.

The certificates of stock above described were deposited in this office by E. Cook, for the county of Muscatine, on or about the 25th day of June, 1866.

(Signed) UNION TRUST CO.,
By I. H. FROTHINGHAM, *Prest.*

88 I took the certificates of stock to New York in June, 1866, as attorney for Muscatine County; handed them to Mr. Ebenezer Cook

be deposited with the Union Trust Co. Parties claiming to hold Muscatine bonds immediately commenced attaching. I did not get any of the sixteen per cent. which was to be paid for the stock. The receipt, a copy of which I attach to this statement, is all I brought back for the certificate.

HENRY O'CONNOR.

MUSCATINE, *Sept.* 13, 1871.

We agree this may be read as a deposition taken in due form.

GRANT & SMITH,
Attorneys for Miss. & Mo. Co.
THOMAS HANNA, *for County.*
J. N. ROGERS, *for Plff.*

(Endorsed:) Stipulations, copies, &c. Filed Oct. 30, '72. George B. Corkhill, clerk.

89 UNITED STATES OF AMERICA,
District of Iowa, ss:

I, George W. Clark, marshal of the United States for the district of Iowa, do hereby certify that having, on the 31st day of October, A. D. 1868, under and by virtue of a certain writ of execution to me directed, issued out of the circuit court of the United States for said district, tested the 26th day of October, A. D. 1868, whereby I was commanded that of the property of the county of Muscatine and of the Mississippi & Missouri Railroad Company, found in said district, I cause to be made the sum of six thousand five hundred and forty-five & $\frac{86}{100}$ dollars, with interest, and costs taxed at thirty one $\frac{10}{100}$ dollars, being the amount of a certain judgment recovered in the said court by Jared F. Harrison against the said county of Muscatine and the Mississippi & Missouri Railroad Company, on the 16th day of October, A. D. 1867, levied on seventeen hundred and fourteen (1,714) shares in the capital stock of the Mississippi and Missouri Railroad Company, (a corporation in the State of Iowa,) to wit: two hundred & fourteen (214) shares, evidenced and represented by stock-certificate number one hundred & twelve, (112,) and fifteen hundred (1,500) shares, evidenced and represented by stock-
90 certificate number four hundred and ninety-five, (495,) both issued to said county, and which said stock stands in the name of said county, and was levied on as the property thereof;

And having on the same day given due notice of said levy to said railroad company, by serving a notice thereof on Ebenezer Cook, secretary of said company, at its office in the city of Davenport, in said State of Iowa; and having also, on the 2d day of November, A. D. 1868, given due notice of said levy to the said county of Muscatine, by serving written notice thereof on John W. Jayne, clerk of the board of supervisors of said county, at his office in the city of Muscatine, in said county, and having given due notice, as required by law of sale under such levy, to wit, by posting up notices in three public places in the county where such sale was made, and by publishing said notice twice in a newspaper printed in said county, I did, on Wednesday, the 23d day of December, A. D. 1868, at two o'clock p. m., at the front door of the court-house in Des Moines, in said district of Iowa, in pursuance of such notice
91 of sale, offer for sale the said seventeen hundred & fourteen (1,714) shares of the capital stock of the said railroad company, at public auction to the highest bidder, for cash, and did then and there sell and strike the same off to Charles T. Cromwell, of the city of New York, for the sum of fifty dollars, ($50.00,) he being the highest bidder therefor, and that being the highest sum bidden therefor.

And in pursuance of said sale, and in order to carry the same into effect, and in consideration of the said sum of fifty dollars, to me in hand paid by the said Charles T. Cromwell, the receipt whereof I do hereby acknowledge, I do hereby bargain, sell, assign, transfer, and set over unto the said Charles T. Cromwell the said seventeen hundred & fourteen shares of capital stock, and all the right, title, and interest of the said county of Muscatine, therein and thereto, as fully as I have power to sell and convey the same under and by virtue of the execution, levy, and sale aforesaid.

In testimony whereof I have hereunto set my hand at the city of Des Moines, in the State of Iowa, this 23d day of December, A. D. eighteen hundred & sixty-eight.

G. W. CLARK,
U. S. Marshal Dist. of Iowa.

[U. S. int. rev. st'p, 6 cent, G. W. C., Dec. 23, 1868.]

92 (Endorsed:)

Bill of sale.

The within is a bill of sale of the U. S. marshal to me, conveying 1,714 shares of stock of the Mississippi & Missouri Railroad Co., the certificate' of which, No. 112 & 495, are in the hands of The Union Trust Co., and demand made for them Dec. 29, '68. (Se' accompanying paper.)

C. T. C.

Filed Oct. 30, '72. George B. Corkhill, clerk.

93 I. F. HARRISON *vs.* COUNTY OF MUSCATINE. } Judgment in U. S. ct. No. 441, October 16, 1867, $6,545.86. Interest @ 6 p'r c't and costs.

		$6,545 86
6 % interest from Oct. 16, '67, to Oct. 6, '70, 2 y'rs 11 mos. 20 d's		1,167 33
		7,713 19
August 10, '70, paid	54 80	
October 6, '70, do.	2,730 00	
		2,784 80
		4,928 39
6 % interest from Oct. 6, '70, to Nov. 8, '70, 1 m. 2 days		26 28
		4,954 67
Nov. 8, 1870, paid		2,950 00
		2,004 67
6 % int. from Nov. 8, '70, to Jan'y 1, '71, 1 m. 23 day'		17 70
		2,022 37
Costs	31 10	
No. 536. Do. on execution & mandam's	82 74	
		113 84
Due on judgment & costs Jan. 1, 1871		$2,136 21

Received January 6, '71, of R. T. Thompson, treasurer Muscatine County, the sum of $2,136.21, bal. due on above judgment and costs as per statement above, and for which duplicate receipts are hereby given.

PUTNAM & ROGERS,
Plff's. Attys.

94 The foregoing is a copy of the receipt given on the final payment of the judgment therein referred to by the county of Muscatine; after such payment had been made it was discovered that in consequence of the absence at the time of the payment of that one of plaintiff's attorneys who had had sole personal charge of the judgment & its collection, an error had occurred in stating the amount due on the judgment, which error consisted in part in omitting to credit the county with the amount made on the judgment by execution sale of stock in the Miss. & Mo. R. R. Co. This error was thereupon corrected by correspondence between pl'ff's att'ys & the county treasurer, and the surplus paide by mistake on said judgment, was by mutual consent plaintiff & the treasurer applied in part payment of another judgment against said county in the hands of said attorneys for collection, and a receipt given to said county therefor, as paid in said last-mentioned judgment which was in favor of Chas. T. Cromwell, Mess. Putnam & Rogers being att'ys for both Harrison & Cromwell.

95 U. S. circuit court for Iowa.

CHAS. T. CROMWELL
vs.
MISS. & MO. R. R. Co. & AL. } In equity.

The foregoing statement may be read in evidence as a deposition, subject to all objections to the relevancy or competency of the matter stated therein.

Oct. 28th, 1872.

PUTNAM & ROGERS,
Compl's. Solrs.

(Endorsed:) Harrison's re'ct and statements of the att'ys of Harrison & Cromwell. Filed Oct. 30, '73. George B. Corkhill, clerk.

96 *Præcipe.*

Circuit court of the United States, district of Iowa.

JARED F. HARRISON, A CITIZEN OF THE STATE of New York,
vs.
THE COUNTY OF MUSCATINE & THE MISSISSIPPI & Missouri Railroad Company, corporations organized under the laws of the State of Iowa.

The clerk of said court will please issue a writ of summons in the above-entitled cause, in an action of debt on interest-coupons or bonds of said county, guaranteed by said railroad company. Damages ten thousand dollars. Returnable to the next October term.

August 2d, 1867.

JNO. N. ROGERS,
Plff's. Atty.

(Endorsed:) Præcipe. Filed Aug. 2, '67. Woodward, clerk.

97 (A.)

STATE OF IOWA.

Bond of the county of Muscatine.

B No. 86.] [$1,000.

Be it known that the county of Muscatine, in the State of Iowa, owes to George C Stone, or bearer, the sum of one thousand dollars, for money borrowed, the receipt whereof is hereby acknowledged, which sum the said county of Muscatine is obligated to pay on the first day January, one thousand eight hundred and seventy-four, with interest on said sum of one thousand dollars at the yearly rate of ten per cent., payable semi-annually at the office of Messrs. E. W. Clark, Dodge & Co., in New York. And the faith of the said county of Muscatine is hereby pledged for the semi-annual payment of the interest & the ultimate redemption of the principal.

SEAL OF THE COUNTY OF MUSCATINE, IOWA. } In testimony whereof I, Arthur Washburn, judge of said county, have hereunto set my hand and affixed the seal of said county the 2d day of January, A. D. 1854.

Attest:

ARTHUR WASHBURN, *Co. Judge.*

RICHARD CADLE, *Co. Clerk.*

(C.)

(Indorsed on back of the bond is the following:) In consideration that the county of Muscatine has transferred to A. C. Flagg,
98 treasurer, in trust, the stock of the said county in the Mississippi & Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures, & the eventual payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed at New York this fourth day of September, 1855.

[SEAL.] JOHN A. DIX, *President.*

A. C. FLAGG, *Treasurer.*

(B.)

$50.] B No. 14. [$1,000.

The county of Muscatine will pay the bearer fifty dollars, on the first day of January, 1861, at the office of Messrs. E. W. Clark, Dodge & Co., New York, being six months' interest on bond B, No. 86.

ARTHUR WASHBURN,
County Judge.

99 *Petition.*

Circuit court of the United States, district of Iowa.—October term, 1867.

JARED F. HARRISON
vs.
THE COUNTY OF MUSCATINE & THE MISSISSIPPI & MISSOURI RAILROAD COMPANY.

To the circuit court of the United States for the district of Iowa:

Your petitioner, Jared F. Harrison, a citizen of the State of New York, claims to recover of the county of Muscatine, in the State of Iowa, a mu-

nicipal corporation created by the laws of the State of Iowa, and the Mississippi & Missouri Railroad Company, a corporation organized in the State of Iowa under the laws thereof, (who have been summoned to answer to your petitioner in an action of debt on the bonds of said city guaranteed by said railroad company,) the sum of ten thousand dollars with interest.

1st. And for cause of such claim against said county of Muscatine your petitioner avers that, on or about the 2d day of January, A. D. 1854, the said county, for a valuable consideration, to wit, money
100 borrowed by it for the purpose of paying for stock in the Mississippi & Missouri Railroad Company, subscribed for by said county in accordance with the law, for the purpose of aiding in the construction of said railroad, executed and delivered to some person or persons to your petitioner unknown eight certain bonds or writings obligatory, sealed with the corporate seal of said county, signed by its county judge, and attested by its clerk, by each of which said bonds said county obligated itself to pay to George C. Stone or bearer the sum of one thousand dollars on the first day of January, A. D. 1874, with interest thereon at the rate of ten per cent. per annum, payable semi-annually at the office of Messrs. E. W. Clark, Dodge & Co., in New York. Said bonds bear date the 2d day of January, A. D. 1854, and are numbered, respectively, Nos. 86, 89, 90, 91, 92, 93, 96, & 97, and are all in the same words and figures precisely except the said numbers, and a copy of said bond No. 86 is hereto annexed, marked A, and made part hereof. And your petitioner further avers that said county also executed & delivered
101 along with & attached to each of said bonds forty coupons or warrants for the several semi-annual instalments of interest to fall due on such bond, signed by said county judge, being each for the sum of fifty dollars, payable to bearer at the office of Messrs. E. W. Clark, Dodge & Co., in New York, & falling due respectively & severally at the end of each and every period of six months from the date until the maturity of said bonds, to wit, on the first days of July and January of each and every year. Said coupons are all in the same words and figures precisely except the numbers thereof, the number of the bond to which they belong, and the date of maturity as therein expressed.

A copy of the coupon on said bond No. 86, maturing January 1st, 1861, is hereto annexed, marked B, and made part hereof.

And your petitioner further avers that he is now the lawful holder and owner of the said bonds and the unpaid coupons thereon; that the said county of Muscatine has failed and neglected to pay the coupons on all of said bonds maturing, respectively, from July 1st, 1861, to July
102 1st, 1867, inclusive; and also the coupons on bonds No. 86 and 91, maturing January 1st, 1861, being one hundred and six (106) coupons in all, for fifty dollars each; that said coupons are now due and wholly unpaid, and said county is justly indebted to your petitioner thereon in the full amount thereof, with interest thereon respectively from maturity.

2nd. And for cause of such claim against said Mississippi & Missouri Railroad Company your petitioner avers that said bonds were executed and delivered, with the coupons thereon, by said county of Muscatine, and are held and owned by your petitioner, and the coupons thereon are now due and unpaid, in manner and form, as is alleged and set forth in the first count or division of this petition, which is hereby referred to for greater certainty, and that contemporaneously with the execution and delivery of said bonds, the said railroad company, for a valuable consideration, executed and delivered along with said bonds

respectively, to the person or persons to whom the same were issued,
103 an instrument or contract of guaranty indorsed upon each bond, under the corporate seal of said railroad company, signed by its president and treasurer, whereby said railroad company guaranteed to the holder or holders of each of said bonds the prompt payment of the interest thereon as it should mature and the eventual payment of the principal thereof.

A copy of said instrument of guaranty (which is in the same words and figures on each of said bonds) is hereto annexed, marked C, and made part thereof.

And your petitioner alleges that by reason of the failure of said county of Muscatine to pay the coupons on said bonds, as hereinbefore alleged, said guaranty has been broken and said railroad company has become liable to pay to your petitioner the full amount of said due and unpaid coupons, with the interest thereon as aforesaid; yet, though often requested, it has never paid the same nor any part thereof.

Wherefore your petitioner demands judgment against said
104 county of Muscatine and said railroad company, severally and respectively, in the said sum of ten thousand dollars, with interest.

JOHN N. ROGERS,
Plff.'s Atty.

STATE OF IOWA,
Scott County, ss :

I, John N. Rogers, being duly sworn, say that the bonds, coupons, and guarantees on which this suit is brought are in my hands and possession, and that the foregoing petition and the matters stated therein are true as I verily believe.

J. N. ROGERS.

Subscribed and sworn to by said John N. Rogers this day of October, A. D. 1867, before me. Witness my hand & notarial seal.
[SEAL.] CHARLES E. PUTNAM,
Notary Public.

(Endorsed :) Filed Oct. 8, 1867. W. G. Woodward, clerk.

105 (No. 441.)

Summons, U. S. C. C.

UNITED STATES OF AMERICA,
District of Iowa :

To the marshal of the district of Iowa:

In the name of the President of the United States, you are hereby commanded to summon the county of Muscatine and the Mississippi & Missouri Railroad Company, corporations organized under the laws of the State of Iowa, to appear before the circuit court of the United States in and for the district of Iowa, at a term to be begun and holden at Des Moines, on the third Tuesday, it being the fifteenth day of October next, to answer unto Jared F. Harrison, a citizen of the State of New York, in an action for debt on the interest-coupons on bonds of the said county, guaranteed by the said railroad *county* [company], in which the

plaintiff claims damages to the amount of ten thousand dollars, with interest.

Hereof fail not.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at Des Moines, this the 2nd day of August, A. D. 1867, and of the Independence of the United States the 92d.

[SEAL.] W. G. WOODWARD, *Clerk.*

106 Endorsed on said summons is the following:

I hereby acknowledge service of the within writ on me at the city of Muscatine, in the county of Muscatine, on this 13th day of August, A. D. 1867.

JOHN W. JAYNE,
Clerk of the District Court of Muscatine County.

I hereby acknowledge due service of the within writ on me at the city of Davenport, Scott County, Iowa, this 5th day of September, A. D. 1857.

E. COOK,
Sec'y M. & M. R. R. Co.

Returned & filed Oct. 14, 1867.

W. G. WOODWARD, *Clerk.*

107 Circuit court of the United States, district of Iowa, October term, 1867.

OCTOBER 16th, 1867.

JARED F. HARRISON
vs.
THE COUNTY OF MUSCATINE, THE MISSISSIPPI & MISSOURI RAILROAD COMPANY.

This cause came on to be heard, and the plaintiff appeared by John N. Rogers, his attorney, and the county of Muscatine by Thomas Hanna, its attorney; and the Mississippi & Missouri Railroad Company, though duly served with summons herein, and though three times solemnly called, comes not, but makes default; and thereupon the default of said railroad company is duly entered; and the said county of Muscatine having appeared as aforesaid by its said attorney, says nothing in defence of this suit, and thereupon it is ordered that the clerk assess the amount due to the plaintiff on the coupons set forth in the petition, who reports the same at the sum of six thousand five hundred and
108 forty-five dollars and eighty-six cents ($6,545.86;) and thereupon it is considered by the court that the plaintiff have and recover of the said defendant, the county of Muscatine and the Mississippi & Missouri Railroad Company severally, the said sum of six thousand five hundred and forty-five dollars and eighty-six cents ($6,545.86), with his costs taxed at $, and have execution therefor.

109 *Execution.*

THE UNITED STATES OF AMERICA,
District of Iowa, ss:

To the marshal of said district, greeting:

In the name of the President of the United States, we command you that of the goods and chattels of the county of Muscatine, & the Mississippi and Missouri Railroad Company, found in your district, you

cause to be made the sum of six thousand and five hundred and forty-five & $\frac{86}{100}$ dollars, with interest and costs taxed at $31.10, which Jared F. Harrison hath lately, in our circuit court of the United States for the district of Iowa, by the consideration and judgment of said court, recovered against the said county of Muscatine and the Mississippi & Missouri Railroad Company for his damages and cost in a certain action before that time prosecuted by the said plaintiff against the said defendant, as appears of record, together with six per cent. interest on the same, from the 16th day of October, in the year eighteen hundred and sixty-seven, until collected, together with $1.75 for cost of increase on said judgment; and for want of sufficient good' and chattels we command you to cause the same to be made of the lands, tenements,
110 and hereditaments of the said county of Muscatine & the Mississippi & Missouri R. R. Co. And have you that money before our said circuit court on the second Tuesday of May next at Des Moines, Iowa, to render to the said plaintiff, and have you there and then this writ with your doings thereon.

Witness the Hon. S. P. Chase, Chief-Justice of the Supreme Court of the United States, at Des Moines this 26th day of October, A. D. 1868, and the 92 year of our Independence.

[SEAL.] W. G. WOODWARD, *Clerk.*

This execution came into my hands on the 28th day of October, A. D. 1868, and on the 31st day of October, A. D. 1868, I levied the same on seventeen hundred & fourteen (1,714) shares in the capital stock of the Mississippi & Missouri Railroad Company, (a corporation in the State of Iowa,) standing in the name of the said county of Muscatine and levied on as the property of said county, to wit, two hundred and fourteen (214) shares evidenced and represented by stock-certificate number 112, and fifteen hundred (1,500) shares evidenced and rep-
111 resented by stock-certificate number 495, both issued to said county; and on the same day I notified the said county of Muscatine of such levy by delivering to and leaving with John W. Jayne, clerk of the board of supervisors of said county, at his office in the city of Muscatine, a written notice, of which a copy is hereto annexed marked A, and I also notified the said railroad company of said levy by delivering to and leaving with Ebenezer Cook, secretary of said company, at its office in the city of Davenport, a written notice, of which a copy is hereto annexed, marked B.

I also on the 29th day of Nov., 1868, posted up in three of the most public places in Polk County, Iowa, three printed notices, to the effect that said property would be sold to the highest bidder, at the east front door of the court-house, in Des Moines, Iowa, on the 23d day of December, 1868, at 2 o'clock p. m. of said day, to satisfy said execution; a copy of which notice is also attached hereto.

I also gave further notice of said sale by publishing a copy of the notice last described in the Iowa State Register, for two weeks
112 commencing on the 29 day of November, 1868, and afterwards, to wit, on the 23 day of Dec., 1868, at 2 o'clock p. m., at the place aforesaid, I sold said property for fifty dollars to Charles T. Cromwell, he being the highest and best bidder, and that being the highest and best bid.

G. W. CLARK,
U. S. Marshal.

Marshal's fees & costs: mileage, $12.42; service of notice on 2, 4.00; levy of ex., 2.00; posting notices, 1.00; attending sale, 1.00; printer's fees, 10.00; returning ex., 1.00; commission on $50, 1.50—$32.92.

113 "A."

UNITED STATES OF AMERICA,
District of Iowa, ss:

To the county of Muscatine, in the State of Iowa:

You are hereby notified that under and by virtue of a writ of execution to me directed, issued out of the clerk's office of the circuit court of the United States for the district of Iowa, dated Oct. 26th, 1868, in favor of Jared F. Harrison, and against the said county of Muscatine and the Mississippi and Missouri Railroad Company, whereby I am commanded to make, or cause to be made, of the property of the said county and the said railroad company, the sum of six thousand five hundred and forty-five & $\frac{86}{100}$ dollars, with interest thereon from October 16th, 1867, and costs taxed at thirty-one & $\frac{10}{100}$ dollars, for which the said Jared F. Harrison recovered judgment in said court against said county and said railroad company on the 16th day of October, 1867, I have this day levied on seventeen hundred & fourteen (1,714) shares in the capital stock of the said Mississippi and Missouri Railroad
114 Company standing in the name and levied on as the property of the said county of Muscatine, to wit, two hundred and fourteen (214) shares evidenced and represented by certificate of stock number one hundred and twelve (112) issued to said county, and fifteen hundred (1,500) shares evidenced and represented by certificate of stock number four hundred & ninety-five (495,) issued to said county.

Dated Oct. 29, 1868.

G. W. CLARK,
U. S. Marshal for District of Iowa.

I served this notice on John W. Jayn, clerk of board of supervisors of Muscatine Co., Iowa, by reading same to him and delivering to him a copy on the 2d day of Nov., 1868, in the city of Muscatine, Iowa.

G. W. CLARK, *U. S. M.*

115 "B."

UNITED STATES OF AMERICA,
District of Iowa, ss:

To the Mississippi and Missouri Railroad Company and to Ebenezer Cook, secretary of said company:

You are hereby notified that under and by virtue of a writ of execution issued out of the clerk's office of the circuit court of the United States for the district of Iowa, dated Oct. 26th, 1868, in favor of Jared F. Harrison and against the county of Muscatine, in the State of Iowa, and the said Mississippi and Missouri Railroad Company, whereby I am commanded to make or cause to be made, of the property of said county and of the said railroad company, the sum of six thousand five hundred and forty-five & $\frac{86}{100}$ dollars, ($6,545$\frac{86}{100}$,) with interest thereon from Oct. 11th, 1867, and costs taxed at thirty-one $\frac{30}{100}$ dollars, (31\frac{30}{100}$) for which the said Jared F. Harrison recovered judgment in said court against said county and said railroad company on the said 16th day of October, 1867, I have this day levied on seventeen hundred &
116 fourteen, (1,714) shares in the capital stock of the said Mississippi & Missouri Railroad Company, standing in the name, and levi'd on as the property of the said county of Muscatine, to wit, two hundred & fourteen (214) shares, evidenced and represented by certificate of stock

number one hundred and twelve (112) issued to said county, and fifteen hundred (1,500) shares evidenced and represented by certificate of stock number four hundred and ninety-five (495) issued to said county. And you are hereby notified not to permit any transfer of said stock to be made on the books of said company to any person other than a purchaser thereof at sale to be made by me under said execution and levy.

Dated Oct. 29th, 1868.

G. W. CLARK,
United States Marshal for District of Iowa.

I served this notice on the within-named E. Cook, by reading it to him and delivering to him a copy, on the 31st day of October, 1868, in the city of Davenport, Iowa.

G. W. CLARK, *U. S. Ml.*

117 *U. S. Marshal's sale.*

By virtue of an execution to me directed, issued out of the office of the clerk of the circuit court of the United States for the district of Iowa, tested on the 26th day of October, A. D. 1868, in a certain cause wherein Jared F. Harrison was plaintiff and Muscatine County and the Mississippi & Missouri Railroad Company were defendants, commanding me to make of the property of said defendant the sum of six thousand five hundred and forty-five and $\frac{86}{100}$ dollars damages, with interest thereon from the 16th day of October, A. D. 1867, and thirty-one and $\frac{10}{100}$ dollars costs of suit, which by the judgment of said court the said plaintiff recovered against said defendants on the 16th day of October, A. D. 1867, together with the accruing costs, I have seized and levied upon seventeen hundred and fourteen (1,714) shares in the capital stock of the Mississippi & Missouri Railway Company, (a corporation in the State of Iowa,) as follows, to wit: Two hundred and fourteen (214) shares evidenced and represented by stock-certificate number 495, both issued to said county, and taken as the property of said defendants, Muscatine County, to satisfy said execution; and public notice is hereby given that on Wednesday, the 23d day of December, A. D. 1868, at 2 o'clock p. m. of said day, I will proceed to sell said property to the highest bidder, for cash in hand, at the front door of the court-house in Des Moines, Iowa, to satisfy the said execution.

118

Given under my hand at my office in Des Moines, Iowa, this the 27th day of November, A. D. 1868.

G. W. CLARK,
U. S. Marshal.

119 U. S. MARSHAL'S OFFICE, DISTRICT OF IOWA,
Des Moines, Dec. 23d, 1868.

Rec'd of G. W. Clark, U. S. marshal, fifteen $\frac{33}{100}$ dollars, being amount made on execution of Jared F. Harrison vs. County of Muscatine et al., out of U. S. circuit court for district of Iowa, by sale of stock in Mississippi & Missouri R. R. Co., over & above costs of execution and sale.

JNO. N. ROGERS.
Plff.'s Atty.

120 And afterwards, to wit, on the 31st day of May, 1873, it being of the May term, 1873, of said court, there appears in the records of the proceedings thereof in said cause the following decree, to wit:

Circuit court of the United States, district of Iowa. May term, 1873.
Saturday, May 31, 1873.

CHARLES T. CROMWELL
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company and the County of Muscatine, in the State of Iowa. } No. 240. Equity.

This cause came on to be heard on the pleadings and proofs therein at the October term, A. D. 1872, of this court, and was argued by counsel for the respective parties and taken under advisement by the court. And now at this term, to-wit, on the 31st day of May, A. D. 1873, the court being fully advised in respect thereto, it is ordered, adjudged, and decreed as follows, to wit:

That the said complainant, Charles T. Cromwell, be, and he is
121 hereby, adjudged and declared to be the lawful holder and owner of seventeen hundred and fourteen (1,714) shares of the capital stock of the said defendant, the Mississippi and Missouri Railroad Company, heretofore owned and held by the said defendant, the county of Muscatine, and standing in the name of said county on the books of said Railroad Company, and evidenced and represented by stock-certificates issued by said company to said county as follows, to wit: A certificate numbered 459, for fifteen hundred (1,500) shares, dated June 23d, 1859; and a certificate numbered 112, for two hundred and fourteen (214) shares, dated February 10th, 1857, which said ten certificates were deposited by said county, and for its benefit, with the Union Trust Company of the city of New York, on or about June 25, 1866. That the title of said complainant to said shares of stock, derived under the judgment, execution, levy, and sale, in the suit of Jared F. Harrison against the county of Muscatine, as set forth in the bill of complainant herein,
122 is valid and perfect, and free and clear of and from any interest or lien, legal or equitable, of either the said county of Muscatine or the said Mississippi and Missouri Railroad Company, in or upon the said shares of stock. That the said railroad company, its officers and agents, be, and they are hereby, adjudged and decreed to recognize the said title of said complainant to said shares as valid and perfect, and to permit and cause the same to be transferred into the name of said complainant on the books of said company, and to do all other necessary and proper acts for fully evidencing the complainant's title to said stock, and that the said county of Muscatine and all persons claiming under it be, and they are hereby, forever barred from setting up any right, title, or interest in or to said shares of stock, or any part thereof, as against the complainant herein, his executors, administrators, or assigns; and it is further adjudged and decreed, that the complainant recover of the said defendant his costs herein, to be taxed, and have process to collect the same.

(Signed) J. M. LOVE.

123 And afterwards, to wit, on the 3d day of July, A. D. 1873, respondents, by Thomas Hanna, their solicitor, filed in the said clerk's office their petition for appeal of said cause to the Supreme Court of the United States, which said petition is in words and figures following, to wit:

Circuit court U. S., dist. Iowa.

CHARLES T. CROMWELL
vs.
THE COUNTY OF MUSCATINE & THE MISSISSIPPI & MISSOURI RAILROAD COMPANY.

Now comes the defendants, during the term, and pray the court to allow them an appeal from the decree of this court to the Supreme Court.

THOS. HANNA, *for Defts.*

(Endorsed:) Filed July 3, '73. George B. Corkhill, clerk.

124 And on the same day, to wit, on the 3d day of July, A. D. 1873, the same being of the May term, A. D. 1873, of said court, the' appears on the records of the proceedings thereof in said cause the following entry, to wit:

Circuit court of the United States, district of Iowa. May term, 1873.
Thursday, July 3, 1873.

CHARLES T. CROMWELL
vs.
THE COUNTY OF MUSCATINE & THE MISSISSIPPI & MISSOURI RAILROAD COMPANY. No. 240. Eq.

The defendants at this term having prayed an appeal from the decree of this court to the Supreme Court of the United States, it is ordered that said appeal be allowed with a stay of execution, upon the defendants or either of them giving bond to the plaintiffs, with sureties, to be approved by the clerk, in the sum of one thousand dollars, to be approved by the clerk in thirty days from July 3, 1873.

125 And afterwards, to wit, on the 10th day of July, A. D. 1873, respondents, by their solicitors, filed in said clerk's office their appeal-bond, which said appeal-bond is in words and figures following, to wit:

Know all men by these presents that we, the county of Muscatine and the Mississippi & Missouri R. R. Company, of the State of Iowa, principals, and William H. Stewart, John B. Dougherty, sureties, are held and firmly bound to Charles T. Cromwell in the penal sum of one thousand dollars; to which payment we bind ourselves & each of us this 3 July, 1873.

The condition of this obligation is this: Whereas the said county of Muscatine and said Mississippi & Missouri R. R. Company have appealed from the decree of said circuit court (to the Supreme Court of the United States) in a cause in equity in said court wherein said Cromwell is plaintiff, and said county & R. R. Co. defendants:

Now if said defendants shall duly prosecute said appeal & per-
126 form the decree of said Supreme Court on appeal, and pay all the costs of said appeal, and abide by and perform the orders of the Supreme Court in said cause, this obligation shall be void, otherwise remain in full force and effect.

Given under our hands the date above written.

MUSCATINE COUNTY,
By THOMAS HAN'A,
MISS. AND MO. R. R. CO.,
By JAMES GRANT,
Attorney.
W. H. STEWART.
J. B. DOUGHERTY.

STATE OF IOWA, *Muscatine Co., ss:*

We, W. H. Stewart and J. B. Dougherty, being duly sworn, state that we are each residents of and freeholders in the State of Iowa; that we each are worth more than one thousand dollars in real estate in the State of Iowa, not exempt from execution, over and above all our debts and liabilities.

W. H. STEWART.
J. B. DOUGHERTY.

Subscribed in my presence by said W. H. Stewart and J. B. Dougherty, and by them sworn to before me this 9th day of July, A. D. 1873.

[SEAL.] T. R. FITZGERALD, *N. P.*

(Endorsed:) Filed & approved this 10th day of July, 1873. George B. Corkhill, clerk.

127 Circuit court of the United States, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of the records and proceedings in a certain cause, wherein Charles T. Cromwell is complainant and the Mississippi & Missouri Railroad Company and the county of Muscatine are respondents; as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 29th day of August, A. D. 1873.

[SEAL.] GEORGE B. CORKHILL,
Clk C. C. U. S., Dist. of Iowa.

(Indorsement on cover:) No. 262. The Mississippi and Missouri Railroad Company & Muscatine County, appellants, vs. Charles T. Cromwell. Iowa C. C. U. S. Filed 16th October, 1873.

Supreme Court of the United States.

OCTOBER TERM, 1874.

THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY AND MUSCATINE COUNTY,
APPELLANTS,
vs.
CHARLES T. CROMWELL,
APPELLEE.

Appeal from the United States Circuit Court for Iowa.

ARGUMENT FOR APPELLANTS,

BY

WRIGHT & LOWE,

Of Counsel.

R. Beresford,
Book and Job Printer
628 F and 523 Seventh St.,
Washington, D. C.

THE M. & M. R. R. CO. AND MUSCATINE CO., *Appellants*,

vs.

CHARLES T. CROMWELL, *Appellee.*

} *ss:*

The case upon which the opinion of the Court is challenged when reduced to its simplest form, is this:—

In 1853 the county of Muscatine, Iowa, subscribed one hundred and fifty shares of one hundred dollars each in the capital stock of the M. & M. Railroad. To pay this subscription the county issued its bonds to the amount of $150,000, of $1,000 each, running twenty years, with coupons attached for the payment of the interest semi-annually, at the rate of 10 per cent. per annum, which were afterwards negotiated upon the guaranty of the R. R. Co., which was to retain the stock thus subscribed for its own protection and that of the bondholders, and with power to sell the stock or coupons for interest in case of default; afterwards the county became entitled to 214 shares more of the capital stock of said company, being the amount of interest computed on the stock of the county up to a certain date. Certificates representing this stock in shares were first issued to A. C. Flagg, Treasurer of the R. R. Co., in trust to indemnify said company for its guaranty of the county's bonds—one for 1,500 shares, the other for 214 shares. Afterwards these two certificates were canceled by order of the board, and at the office of said company, in New York, two other New York certificates were issued to the county of Muscatine: one on the 18th of February, 1857, No. 112, for 214 shares; the other, No. 459, on the 23d of June, 1859, for 1,500 shares.

The company had two places of business, one in New York City and one in Davenport, Iowa. John A. Dix, President; and A. C. Flagg, Treasurer; and other officers resided in New York, where the chief business of the company was transacted, including the issuing and the transfer of certificates of stock. Evidence of these facts will be found in Transcript, pp. 18, 26, 27.

These two certificates of stock in favor of the county of Muscatine were deposited with the Union Trust Company of New York for said county, on the 26th of July, 1866. Transcript, p. 27. It is conceded by the pleadings on both sides that the M. & M. Railroad Co., in the year 1866, failing in ability to pay the interest on its mortgages, became utterly insolvent, the mortgages foreclosed in May of that year, the road with its rolling stock and all its fixtures and appendages, sold to pay the debts of the same. Not on execution by an officer, but at private sale under an agreement between the purchaser and the officers of said company, to the effect that if the stockholders would consent to a private sale at a given figure, the purchaser (Chicago, Rock Island, and Pacific R. R. Co.) would pay to the stockholders the sum of $552,320, to be divided among them in proportion to the number of shares which each should hold, which was ascertained to be 16 per cent. upon the par value of their stock. This sum was afterwards reduced to $541,527, on account of some deficiencies, with interest thereon at the rate of 7 per cent., from the 1st day of December, 1865, until the same should be paid into the hands of the receiver, B. F. Allen. (Transcript, pp. 21, 22.) This sum was to be paid in cash, or the bonds of the new company, secured by first mortgages on the road; if in the latter they were to be converted by the receiver into cash in the market, under certain defined restrictions.

In the fall of 1867, Jared F. Harrison obtained a judgment in the Circuit Court of the United States of Iowa, against the county of Muscatine, in said State, for $6,545.86, based upon a certain amount of coupons that were due upon the railroad bonds of the county. (Transcript, p. 34.) Upon this judgment the plaintiff in said suit had his execution issued October 26, 1868, and placed in the hands of the Marshal, who on the 31st of October, of the same year, "levied the same on 1,714 shares in the capital stock of the 'M. & M. Railroad Co., being the property outstanding in 'the name of said Muscatine county, namely: 214 shares 'evidenced and represented by stock certificate number 112, 'and 1.500 shares evidenced and represented by stock certi-'ficate number 495, both issued to said county."

A notice of this levy was served upon E. Cook, secretary of the railroad company, on the same day of the levy, and on John W. Jayne, clerk of the board of supervisors of the county of Muscatine, on the 2d day of November, 1868. (Transcript, pp. 35, 36.)

On the 23d of December following the Marshal sold the certificates of stock aforesaid at Des Moines, Iowa, to Charles P. Cromwell, the highest bidder, for $50. (Transcript p. 35.) On the same day of the sale the Marshal paid to John N. Rogers, attorney for Harrison, $15.33, being the amount made on the execution after paying costs. (Transcript, p. 37.)

Following this, in the order of events, the county of Muscatine, between the 16th of October, 1870, and the 6th of January, 1871, by instalments, at different times, paid off the entire judgment, interest and costs of the said Harrison above referred to, without regard to the $15.33, made on the execution aforesaid, and took a receipt in full for the same, at the date last aforesaid, from Putman & Rogers, attorneys for the plaintiff in that suit. (See receipt T., p. 30.)

It was subsequently claimed by Messrs. Rogers & Putman, attorneys for Harrison, that the omission to credit said judgment, with the $15.33, made on the execution was occasioned by the fact that the attorney who had the main personal charge of the case was absent at the time the final payment was made, and that the failure to make this credit was the result of an oversight or forgetfulness. And that afterwards when the error was discovered it was corrected by correspondence with the Treasurer of Muscatine county, with whom it was agreed that this $15.33, should be credited on another judgment, which the said attorneys had against the county in favor of Charles T. Cromwell. (Transcript, p. 30.) The next thing in the order of events was the institution of this equitable suit, commenced about the 3d of January, 1871, for the purpose of fixing and establishing the title and ownership of the 1,714 shares of stock aforesaid in him, the said Cromwell, and extinguishing all claim of the plaintiff in error thereto, and compelling the officers of the M. & M. Railroad Co. to transfer the stock in question upon the books of the company to the defendant in error. All this on hearing was ordered and decreed as prayed for by the court below, for which the plaintiff in error appeals, &c.

The above statement of the facts in the order of their occurrence is believed, as it is intended, to be strictly accurate as revealed by the record.

The appellee will insist upon a confirmation of the judgment below, with the highest effort in the way of persuasion and argument, because if he succeeds he will realize from the $50 paid to the Marshal at the execution sale, a sum exceeding $32,000 cash of the funds of appellants. This is ev-

ident from the facts disclosed in the record. For in consideration the stockholders of the M. & M. Railroad Company, would consent to a private sale of their road to the Chicago, Rock Island and Pacific Railroad Company, at the figure of $5,500,000, they were to be paid under such an arrangement the sum of (when reduced as aforesaid) $541,527 cash in proportion to their respective shares, which was ascertained to be about 16 per cent. This sum was to be paid at once in the hands of B. F. Allen, as receiver. Its payment was neither speculative or contingent, it was worth 100 cents on the dollar, the interest which the appellants had therein was $27,424, but under the arrangement this was to draw 7 per cent. interest from the 1st of December, 1865, two years and a half, increasing the amount to $32,223.

This sum, less $50, (or rather less $15.33, the amount realized on the execution after the payment of costs, &c.,) appellee asks, may be confirmed and made available to him as the fruit of his supposed purchase of the stock in question at the execution sale, and he appeals to a Court of Equity to assist him in doing so. And now by this simple recital of the facts brought to the attention of the court, touching this extraordinary claim made by the appellee, we proceed as briefly as possible to show the invalidity of the levy and sale of the certificates of stock referred to by the Marshal in his return upon the execution, and the consequent want of title in the successful bidder.

First. It will be remembered that the M. & M. R. R. Co. had two offices or places of business—one in Iowa and the other in the city of New York—that the president and treasurer of the company, and other officers resided in the latter place, that the certificates of stock were issued there, and the books for the transfer of the stocks were kept there; and as the principal officers of the company resided there, the presumption is that most of their business was transacted there. The two certificates of stock issued to Muscatine county show on their face that they were issued in New York, (Transcript, p. 18,) and the evidence is clear that their situs was in New York, in the hands of the Union Trust Company, at the time of the alleged levy thereon by the Marshal, and consequently entirely out of the official reach and jurisdiction of the Marshal. Yet the return upon his execution shows a levy, or attempted levy, upon these identical certificates of stock, for it describes each by their number, the amount, &c. Now, as the situs of these were extra-territorial

at the time, we say the assumed and fictitious levy thereon was irregular and the sale thereunder void, and the defendant took nothing under his bid.

It is not denied that certificates of railroad stock are the subjects of levy and attachment as unnegotiable notes or other rights in action, but we deny that an unnegotiable note in the hands of some one in New York, although owned by some one in Iowa can be attached or garnished by any process in the latter State, for the plain reason that the paper and the party holding it, are beyond the jurisdiction of the Iowa courts.

But it may be said that certificates of railroad stock do not stand in the same category of other choses in action, under the provisions of the Iowa statutes, that § 3,269, Rev., 1860, declares that stock owned by the defendant in any company, may be levied upon in the same manner provided for attaching the same. Now the 3d clause of § 3,194 of same statute prescribes the mode for attaching stock, and reads as follows, to wit:

"*Stock in a company is attached by notifying the president or other 'head of the company, or the secretary, cashier or other man-'aging agent thereof of the fact that the stock has been so at-'tached.*"

Now it may be contended that inasmuch as a notice was served on E. Cook, Secretary of the company in Iowa, that that made a levy on the certificates of stock belonging to the county of Muscatine, good and effectual, under the above clause of the statute. To this assumption we make two answers:

1. We might concede that to be so, if upon the stock subscribed and paid for by the county, no certificates of stock had yet been issued, or if issued and delivered to the county, and still in its possession such a notice would perhaps be effectual, unless it fell under the category that will be suggested in our second answer. But we insist that a notice of this kind is not a good and valid levy where the certificates of stock, as in this case, had been issued and delivered to the defendant, and by the defendant placed in the custody of a third party for any purpose, whether such third party lived in or out of the State, for in that state of case the plaintiff would be shut up to the necessity of reaching the certificates of stock in the method prescribed in the next

or fourth clause of the same statute: namely, by garnishment on execution. Under this method, if the third party is within the jurisdiction of the court or the Marshal's authority, the remedy will be an easy one, as the garnishment will compel him either to deliver up the certificates or respond to their value. But if he is out of the State, then the creditor of a company would be in no better condition than the creditor of an individual would be in like circumstances; both would be without a remedy. In this respect the statute did not intend, and does not as a matter of fact give a creditor of a railroad company any advantage over the creditor of individuals.

The other answer to the supposed objection suggested, which we desire to make, is this—

2. The facts in the record show that the M. & M. Railroad Company had two offices or places of business—one in Iowa and one in New York—that the certificates of stock were issued at the office in New York, as well as transferred on the books there when assigned; and that the certificates of stock now in question were issued in the New York office; and, as a matter of fact, were in New York when the alleged levy was made by serving a notice on one of the officers of the road at the Iowa office. Here is a contingency or state of case not contemplated or met by any provision of the statute, or covered by any known decision of a court. Yet, the case is before the court, and unless disposed of on some other point, will have to be met by the establishment of a rule that shall best accord with reason and justice. And we suggest, in the absence of any statutory provisions applicable to a case of this kind, that when the matter or business for which the remedy is sought, was transacted at the office in the State, then a levy made by notice on some officer of the company there, would be good, but if it related to a description of business transacted alone in an office out of the State, then a notice served upon an officer in the State must be held ineffectual to constitute a legal levy. Such a rule, if established, would have the support of reason, justice and policy, open the way out of this difficulty, violate no principle of equity, and prevent the consummation of a great wrong.

3. On pages 29 and 30, of the Record, the Court will find the evidence of the full payment of the Harrison judgment against the county of Muscatine, for which a receipt in full

was given by Putman & Rogers, attorneys, who received the whole amount thereof in money, without giving a credit thereon, of the $15.33, which had been made on execution by sale of the county railroad stock.

Discovering this omission afterwards, the said attorneys made an arrangement with the treasurer of Muscatine county to have this $15.33 credited on another judgment, which the same attorneys had obtained against Muscatine county, in favor of the defendant in error of this case. This was without any show of authority on the part of the treasurer. If otherwise, however, the fact remains that this sum of $15.33 was never applied as a credit or payment to the judgment, on which it was made by execution, but through the negligence of the parties concerned it was suffered to lapse and entirely fail of its purpose; and yet, taking advantage of this negligence they are now invoking a Court of Equity to aid them under the color of an irregular execution sale to possess themselves of $32,000, more or less, of the money of the plaintiffs in error. Thus forgetting, as it seems to us, that Courts of Equity deal with matters of this kind upon principles "Ex æquo et bono."

4. The appellee in bringing this suit, as indicated by the prayer of his bill, acted upon the supposition that the two certificates of stock described in the marshal's return on the execution, issued to and owned by the county, constituted the consideration of the proportional interest, which the county of Muscatine had, in the sum of $541,527, agreed to be paid by the C. R. I. & P. R. R. Co. to the stockholders of the M. & M. R. R. Co., and that by levying on, and buying said certificates of stock he would be entitled to whatever interest the county would have in said sum of money. But it is submitted that this is a misapprehension. The fact is sworn to and not denied, (Record, page 11,) but fully corroborated by the attending circumstances, that the sum of $541,527 was agreed to be paid to the stockholders of the M. & M. R. R. Co., in consideration they would consent to a private sale of their road at $5,500,000, and not in consideration of any value, which their stock as such possessed, for it was well known that it was wholly valueless, the company being confessedly insolvent; and had there been a public sale by the marshal under the foreclosure, nothing would have been left for them.

It was ascertained that this gross sum, which was to be paid for the consideration named, would amount to about 16

per cent. upon the par value of the stock; and that the shares of stock were simply referred to for the purpose of fixing the *pro rata* amount which each stockholder would get out of the sum specified, and that they might so get the same it was by arrangement placed in the hands of a receiver, in whose possession the appellee says it was when he filed his bill in this case, and where we may well presume it was when the levy was made upon the certificates of stock referred to, and where under the laws of Iowa it could have been reached by garnishment on execution—the receiver being within the jurisdiction of the court; if not, then by garnishment on attachment sued out on a transcript of the judgment wherever he might be.

Now, in the face of this plain and easy statutory remedy, will this court sustain the extraordinary course of procedure pursued in this case? The effect of the judgment below, if carried out, is intended to have an extra territorial operation, without which it subserves no purpose.

It requires the Union Trust Company of New York, and the officers of the railroad company residing there and having the books of transfer in their office there, to recognize the appellee as the owner of the two certificates of stock heretofore described, then and now under their control and custody, and to transfer the same to him on their books.

It is needless to say that no such effect can be given to a foreign judgment, any more than you can reach the certificates of stock in a railroad, or choses in action, belonging to the defendant in the execution, found in the hands of a third party, by simply a statutory levy made, as in this case by notice, &c., for in that state of case the statutes prescribe a different method of procedure.

5. But both the defendants appeal, and upon what principle is it that this decree could yield entirely the rights of the M. & M. Co., and declare this stock free and clear from any interest or lien, legal or equitable, of said company in or upon the same? It was transferred or hypothecated by the company for a legitimate and valid purpose long before the levy or sale. The right of the railroad company is well protected by the law, and its equities are certainly stronger than the appellee's. This stock, in consideration of the security of the bonds, is still held as security and for the protection of the company. As appellee has never paid a dollar, never has parted with any consideration, it is not for him to say that there has not been a strict

technical hypothecation or pledge of the stock. He is in no position to defeat the strong and unquestioned equities of the railroad company in this stock. On this point we ask with the utmost confidence the reversal of this decree. Until this lien is satisfied the court will certainly not order the transfer, (Brant *vs.* Bank of Washington, 10 Pet. 596,) and appellee should have made inquiry, (*vs.* Woodstock, 21 Vt. 353.) By his purchase at the execution sale, he got only the debtor's (the county) interest. The company by the giving of the certificate, did not waive its lien 14 Mo., 271.

Newbury *vs.* Railroad Co., 17 Mich., 141, (a strong case, and to it the attention of the court is expressly called.) See also 40 Pa. St. 271; 37 Geo. 615; 5 Blatchford C. C. 59; Angel on Corp. 571 and 575.

6. But if doubt obtains on any of these points, there can certainly be none on the face of the statute, which required that the property should have been appraised, and the express decision of the State Sup. Court, that a sale without such appraisement is void.

The Iowa Rev. 1860, § § 3360, provides that no goods and chattels, &c., should be sold for less than the two-thirds of their fair value, &c. The value, as the statute will show, is to be ascertained by the appraisement of disinterested freeholders. The appraisers, unless otherwise directed, must proceed as the statute directs, to ascertain the value, (§ § 3361.) The '*words*' "unless otherwise directed," in that section refers to cases where the execution defendant may elect to have his real estate sold "subject to redemption," and then he waives appraisement, (§ § 3370, 1.) In all other cases there must be an appraisement, and the sale is void if this is not done. The Sup. Court of Iowa so expressly holds in Maple *vs.* Nelson, 31 Iowa, 324. That, it seems to us, is decisive of the case. There was no special order to the Marshal to sell under appraisement, nor otherwise than according to the statute.

7. The certificates of stock were in possession of the Union Trust Company, and awaiting the disposition of the parties; it can hardly be claimed that they have been or are now anywhere else. And yet appellee invokes the aid of the court to compel such transfer. Equity has no such power. His remedy, if any, is at law for his damages. This, it seems to us, is among the fundamentals of the law touching the sale and transfer of stocks, whether of the

Government or corporations. And especially should this be so, when a party buys at judicial sale, without actual seizure. The officers had not the control of the stocks, they never were in the possession or custody of the defendant in execution, the exact status or the interest of different parties therein was uncertain or unsettled, and for a Court of Equity to interfere would, as in this case, be most inequitable and unjust. Let him take his law on us, (see on this point Angel on Corp., 381; Rev. Iowa, 1860, 1169; Ross *vs.* U. P. Railway Co., Justice Millor's decision, 26, and the authorities there cited.)

A reversal is asked with confidence.

THE M. & M. R. R. CO. and MUSCATINE COUNTY, *Appellants*,

vs.

CHARLES T. CROMWELL, *Appellee.*

Reply to Appellee's Argument.

It is said that the facts stated by us are not fairly presented, but partisan in character. We appeal from this charge to the record itself to disprove the same; and we insist that our statement of the case is less open to such a complaint than the way the appellee's counsel has presented the facts. To specify: On pages 36 and 37 of the transcript will be found the notices which the Marshal of the U. S. (G. W. Clark,) served on the appellants in this case and E. Cook, secretary of said company; of the levy of the execution, in which, among other things, he informs them that "*he had seized and levied upon* 1,714 *shares in the capital stock* of the Mississippi & Missouri Railway Company, (a corporation in the State of Iowa,) as follows, to wit: 214 shares evidenced and represented by certificate of stock number 112, issued to said county, and 1,500 shares evidenced and represented by certificate of stock number 495, issued to said county; and then, on page 28 of the transcript, the court will find the Marshal's return of his levy and sale, and it will be seen that he states that on the 16th day of October, 1867, he levied on 1,714 shares in the capital stock in the Mississippi & Missouri Railroad Company, (a corporation in the State of Iowa,) to wit: 214 shares evidenced and represented by stock certificate numbered 212, and 1,500 shares, evidenced and represented by stock certificate numbered 495, both issued to said county, and which said stock stood in the name of said county, and was levied on as the property thereof."

It will be observed that the officer first states the gross number of the shares of the capital stock of the Railroad seized and taken, and then, under a videlicit, he states specifically what is seized and levied upon, describing two certificates of stock by their numbers, the amount of shares which each represented, to whom issued, that they

stood in the name of the county, and that they were levied upon as the property thereof. But all this about the special levy upon certificates was omitted by appellee in his presentation of the facts of the case. Again, on page 29 of the transcript, will be found a memoranda of a bill of sale, signed with the initials of Charles T. Cromwell's name, C. T. C., from which it will appear that the said Cromwell supposed that he had purchased at said Marshal's sale the certificates numbers 112 and 495, for he says he made a demand for them at the hands of the Union Trust Company, December 29, 1868. This fact was also omitted to be stated; and a little further on we will state the omission of another fact of vital importance in the adjudication of this case. But before doing so, and while on the subject of these certificates, and whether they are the proper subjects of a levy or attachment, we wish to bring out a little more distinctively the points of difference between the counsel for appellee and ourselves.

It is conceded on both sides that at the time this levy was made, that certificates representing the shares of stock belonging to the county of Muscatine, had been issued, and were standing, in the name of the county, on the books of the railroad company, but that they were not in the possession of the county, or within the jurisdiction of the court, but had, on the 25th of June, 1866, been deposited at the office of the Union Trust Company, in the city of New York, in pursuance of what was known as the Meyers agreement, and soon thereafter, parties claiming to hold Muscatine bonds, immediately commenced attaching, &c. See E. Cook and Henry O'Connor testimony, on pages 27 and 28 of transcript.

Now, counsel for appellee, under the 3d head or division of his argument, says that these certificates, issued to the shareholders, are not themselves property, and liable to levy, but are mere written evidences of title,—that the *stock itself*, irrespective of these certificates, is alone subject to levy, that if it was otherwise, the law subjecting corporate stock to execution would be nugatory and ineffectual, for the reason, he says, that it is hardly ever possible to seize the certificates, which the debtor may put in his pocket.

This theory of the law proceeds upon the idea that the purchaser of stock at execution sale, is entitled to have it not only transferred upon the books of the company to him, but to have new certificates of stock issued to him, without regard to the outstanding certificates already issued upon the

same stock, and if the company should refuse to do this, he may invoke a court of equity to compel the transfer, and the issuing of new certificates. That this is the view held by appellee's counsel, is manifest, both from his argument and the prayer of his bill, which, in substance, is as follows: "That the title of your orator may be established to said 1714 shares of stock, free from any interest thereon, claimed by the county of Muscatine or *other parties*, and that the railroad company be decreed to recognize your orator's ownership to said stock, by transferring the same on the books into your orator's name, and issuing to him a certificate therefor."

Now, our theory of the law and practice on these points is in marked contrast with the above. In the first place, we hold, and have shown the authorities therefor, that a court of equity has no power to compel a railroad company, under the circumstances of this case, to transfer the stock of shareholders upon its books; and especially has it no power to compel a railroad corporation to issue a second certificate to represent its stock, on which there are already outstanding certificates in the hands of third persons who have not been made parties to the proceedings, and who were entirely without the jurisdiction of the court, as shown by the facts in this case. Such a practice would be against all rule, all business principles, and lead to confusion, and conflict of interest and consequent litigation.

Again, we hold that certificates of railroad stocks, while they are evidences of title, they are also in the nature of *choses in action*, that they have a value, and are a description properly known as *rights in action*, that they pass from hand to hand by assignment, which is good between the parties thereto and those having actual notice thereof, although not transferred upon the books of the company; that they are liable to be levied upon by execution, &c. If they cannot be found so as to be seized, it is the misfortune of the plaintiff in the execution. If it should be known, as it was in this case, that the certificates of the defendant in the execution were in the custody of a third party, they could have been reached by execution on garnishment. Not of course by a process or writ issue in Iowa, but by suit on a transcript of the judgment brought in New York, where these certificates were at the time. In such a case, the holder of the certificates would hand over the certificates to the officer, to be dealt with as other property levied

upon; or he would in his answer make known to the court his interest therein, and ask that his rights, and that of all others, might be duly adjusted and protected. We ask attention again to § 3194, of the revision of 1860, of the statutes of Iowa—the 4th clause thereof—which prescribes the above course of procedure. The counsel on the other side refers to this same section, and gives a statement of the 1st, 2d and 3d clauses thereof, but strangely enough omits the 4th clause, which meets the particular phase of this case.

It is clearly inferable from the facts disclosed in this case that the transfer books of the company were kept alone in the city of New York. If so, this, perhaps, was a violation of the statute referred to by counsel on the other side, which requires that such books should also be kept in the State where the corporation exists.

But, for a violation of this statutory regulation the railroad company would have to be dealt with, and until this was done and the transfer books were brought within the jurisdiction of the court, the same could not order a transfer of this stock as prayed for, even if it had jurisdiction of the question, which it has not under any circumstances. Besides, when the levy was made in this case the railroad corporation in question had ceased to exist. Its road and franchises had all been sold and transferred to another railroad company, after which the statute referred to does not prescride the place where its books and offices shall be kept.

Counsel for appellee states that we expressly admit that the county's interest passed by the sale. This is strange language for one who is usually accurate and correct in his statements of fact. The whole scope of our argument was just the reverse, to show that the sale was irregular and void.

We again submit whether the true attitude of this case is not set forth under the fourth head or division of our opening argument, and that the reply thereto is no answer.

On page 29 of the transcript will be found a statement of the amount of the Harrison judgment *vs.* Muscatine county, and of the time and amount of the different payments made thereon, showing that every dollar of the principal, interest and costs, including the *costs of the execution*, ($82.74,) was paid in full and receipted by Putman & Rogers, plaintiff's attorneys, most of it before, and all of it within, three days after the suit was commenced.

Now it will be observed by the court that the whole of the fifty dollars paid by appellee to the Marshal at the execution sale of the stock in question was paid back by the county of Muscatine, received and receipted for in full by the counsel for the appellee; and although after this suit was commenced $15.33 of this amount was quietly arranged to be credited on another and distinct judgment which the appellee held against said county, yet, so far as we or this court can know from the record, (and which, no doubt, is the case,) the remainder of the $50 is yet in the pocket of the appellee, or that of his counsel; and still in this remarkable attitude of the case, the appellee is seeking, under the color of a judicial proceeding, to obtain from us over $32,000 cash. We will not undertake to characterize this exhibition of cheek, assuming that this court, which is set to administer justice upon the more enlarged principles of general equity, will take judicial notice of all predatory incursions upon its conscience.

And we beg leave to further suggest, in answer to the argument of the appellee—

First. There is no warrant for his assumption that the county disregarded either the sale or the judgment. Municipal corporations, like individuals, may, at times, and even frequently, be unable to meet their liabilities. This inability, of course, is not to change or affect their legal rights. There was a time, we know, when counties, cities and towns in Iowa and elsewhere as well, were "snowed under" by the ill advised railroad obligations, and if they resorted to the courts for protection, and the ascertainment of the precise extent of their rights and liabilities, it is most too unkind to count it against them, and especially in this instance to use it as an argument to take from the county the little left from the general wreck, and especially when it has, as appears, paid in money derived from the taxation of the people, every dollar plaintiff claims, and that plaintiff is made quite whole without sweeping into his coffers this more than thirty thousand dollars.

Second. The withdrawal of the appeal by the railroad company can make no difference. The county still has an interest in having this fund held for its indemnity. By the consent decree of the court in the foreclosure proceedings, the amount referred to and specified in our opening argument was for the benefit of the county, to the extent of its interest; and whether the railroad company was or was not

a party to the execution can make no difference, for its interest was not as owner but as a holder in trust. It cannot, by withdrawing its appeal nor by any act of its own, without our consent, surrender this security nor change the relation of the county to the fund.

Third. Our attention has been directed to the authorities cited by appellee's counsel under his sixth head in answer to the last point made by us in the opening argument, and with due respect we must be allowed to say that those touching the subject of jurisdiction have nothing whatever to do with this case. If so disposed, the court will find that the cases in 3 Paige, 350; 7 N. Y., 274; 29 Conn., 245; 46 N. Y., 325; do not touch the question we make in the remotest degree. We have not access at this time to all the others, but feel justified in saying that the same remark applies to them. In Bank of Alexandria *vs.* Seaton I Peters, 299, (305,) the bank refused to open its books and make the transfer. Lynn, the trustee, was willing to make the transfer, but the bank refused. An action *at law* could not have been sustained to compel the bank to do this. To this end such action would have been fruitless. The object was not to obtain the stock or interest in it, but the transfer. The cases are as unlike as could well be imagined. The want of Jurisdiction appears in this case on the face of the bill, and it is, therefore, within Wylie *vs.* Cox 15, How., 420, and the other cases cited by appellee.

WRIGHT & LOWE,
Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1874.

THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY AND MUSCATINE COUNTY, APPELLANTS,
vs.
CHARLES T. CROMWELL.

No. 262.

Appeal from the United States Circuit Court for Iowa.

ARGUMENT FOR APPELLEE.

Day, Egbert, & Fidlar,
PRINTERS AND BINDERS,
Davenport, Iowa.

Jno. F. Rogers
Counsel

CASE STATED.

The statement of appellant's counsel, as contained in their printed brief which has been laid before us, we think does not present the case fully and fairly, but is rather of an *ex parte* character. Instead of attempting to amend or supplement it, we prefer to state the case *de novo*, in an orderly and systematic way, as follows: —

Cromwell, the appellee, a citizen of New York, filed his bill in the Court below against the Mississippi and Missouri Railroad Company, an Iowa corporation organized under the general law of that State, and the county of Muscatine, Iowa, to establish his title, as against both defendants, to 1,714 shares of the capital stock of the railroad company, standing on its books in the name of the county, and to compel its transfer on said books to himself.

The bill (record, pp. 1–3,) alleges that in 1853 the county, in pursuance of a vote of its inhabitants as authorized by law, subscribed for 1,500 shares of said capital stock, which were duly issued and delivered to it; that afterwards 214 additional shares were issued to the county, for interest scrip of the company held by it and convertible into stock: that all these shares were owned by the county, and stood, and still stand, in its name on the railroad company's books; that the railroad company, having mortgaged its road and all its property for a very large amonnt of borrowed money, failed to pay the interest on its bonds, and became, and has ever since been, insolvent; that in 1866 the mortgages were foreclosed, and the mortgaged property sold under the decree to another company, which has ever since had possession, by which the defendant company was divested of all its tangible property, since which it has transacted no business, held no election of officers, done no corporate acts, and exists only (if at all) to

wind up its concerns; that the only value of its stock consists in the contingent and uncertain right of the holders to share pro rata in a fund of about $550,000, being a portion of the purchase money of the road which the bondholders had agreed to concede to the stockholders, and which, if divided among the latter, would give them sixteen per cent on the par value of the stock; that said fund is in the hands of a receiver appointed by the Court below, in a suit of Howard *et als. v.* the Mississippi and Missouri Railroad Company *et als.*, in which a decree has been rendered appropriating said fund to pay certain creditors of the railroad company.

That one J. F. Harrison recovered a judgment in the Court below, October 16, 1867, against *both* the defendants herein (the county and the railroad company) for $6,545.86 and costs; that under execution on said judgment, the marshal for the said district, October 31, 1868, levied on said 1,714 shares of stock, and, having due notice, sold them, under said levy, at public auction, to complainant, December 23, 1868, and executed tohim a certificate of sale, assigning and transferring said stock to him; by virtue of which complainant claims to be the lawful owner of the said stock, and entitled to have it transferred into his name; that notwithstanding, the county claims and pretends still to be the owner, and to be entitled to its distributive share of the fund, if any of it is finally left for the stockholders; that, by reason of the disorganized condition of the railroad company, complainant is unable to procure the said shares to be transferred into his name; that he has demanded such transfer of the corporate officers; and that as the railroad company has no property whatever that can be reached by execution at law, he has no adequate remedy at law against it for refusing to transfer the stock to him on its books.

He prays a decree establishing his title to the stock, and requiring the railroad company to recognize such title and transfer the stock to him on its books and issue him a certificate; and for general relief.

The defendants answered separately, but their answers (pp. 6–8, 10–12,) are alike, except some verbal differences. No allegation of the bill, save one, is denied, and nearly all are expressly admitted, including the insolvency of the railroad company and general condition of its affairs.

It *is* denied, however, that certificates for the stock were issued to the county, or that it stood in the name of the county on the books of the railroad company, so as to be subject to levy and sale under the Harrison judgment and execution. The answers allege that the county paid its subscription for the stock in its own bonds (on some of which the Harrison judgment was recovered), which bonds the railroad company guaranteed, and to secure itself against such guaranty, with the consent of the county, kept and retained the stock subscribed by the county, and the scrip accruing thereon, and never issued any certificate for any of said 1,714 shares to the county; that in 1865, after the agreement between the stock and bondholders of the railroad company to sell the road and divide $550,000 of the proceeds among the stockholders, Ebenezer Cook, secretary of the railroad company, acting for it, and Henry O'Connor, acting for the county, assented to said sale, and the Union Trust Company, of New York (under an arrangement to that end), gave said Cook a certificate that said stock was entitled to sixteen per cent, which Cook holds by assent of the county, to secure said guaranty; that judgments have been recovered against the county and the railroad company on the guaranteed bonds much exceeding the value of the stock; that Harrison was a plaintiff in the Howard suit, and

was allowed therein the full amount of his bonds; that complainant was one of Harrison's attorneys (as defendant is informed), and paid no money on his purchase; that, by reason of these facts, he acquired no title to the stock by the sale to him.

The *only* defense, therefore, set up in the answer, is this: that the levy on and sale of the stock to complainant were ineffectual, because the stock was pledged or hypothecated to the railroad company as security against its guaranty of the county's bonds.

Issue was duly taken on the answers by replication (p. 9).

On the evidence there can be no dispute about the facts. They appear as follows:

The fifteen hundred shares in the railroad company subscribed for by the county, were originally issued, in 1854, to A. C. Flagg, treasurer of the railroad company in trust, in pursuance of a resolution of the directors of the railroad company that they be held by him in trust, to secure payment of the county bonds given for the stock, and guaranteed by the railroad company. In the year 1859, in pursuance of a resolution of the directors of the railroad company, the certificate issued to Flagg was cancelled and a new certificate, No. 479, for said fifteen hundred shares, was issued to Muscatine county. The stock was at the same time transferred on the books into the county's name.

The two hundred and fourteen (214) shares issued for interest scrip were originally issued to the county, in February, 1857, and certificate 212 issued to the county therefor.

(Statement of E. Cook, secretary of the railroad company, used, by consent, as a deposition. pp. 26–27.)

By the entries in the company's stock ledger, (which are fully explained by the statements of Mr. Cook), the account with "A. C. Flagg, treasurer, in trust for Muscatine county," appears to be balanced; while on that of "Muscatine county," the county stands credited with seventeen hundred and fourteen (1714) shares, viz: two hundred and fourteen (214) February 18, 1857, by "dividend scrip, 112;" and fifteen hundred (1500) June 23, 1759, by (transfer from) "H. Tows, treasurer Mississippi and Missouri Railroad Company, 459," the last figures in each case being the number of the certificate. (See p. 36.)

In June, 1856, Henry O'Connor, agent of the county, took said certificates to New York, and Mr. Cook at his request deposited them with the Union Trust Company, for the purpose of giving the county's assent to the arrangement for the sale of the railroad and to entitle the county to share in the dividend to be paid to the stockholders on such sale.

Mr. Cook gave Mr. O'Connor a written acknowledgement of the receipt of the certificates by him (Cook) "to be deposited *for said county*, with the Union Trust Company, of New York, in pursuance of a certain agreement," etc. (the agreement for the sale of the road) to which was annexed the following receipt of the Trust Company:

"UNION TRUST COMPANY'S OFFICE,
NEW YORK, *July 26th*, 1866.

The certificates of stock above described were deposited in this office by E. Cook, *for the county of Muscatine*, on or about the 25th day of June, 1866.

[Signed] UNION TRUST COMPANY.
By I. H. Frothingham, President."

(Statements of E. Cook and Henry O'Connor, pp. 27, 28. Deposition of Frothingham, pp. 16, 17.)

The entire record and proceedings in Harrison's judgment against the county and the railroad company, are in evidence, showing that the judgment was recovered on coupons on some of the county bonds, guaranteed by the railroad company, bearing date January 2d, 1854. (See petition and exhibits attached, pp. 31, 32.) Judgment was rendered October 16th, 1867, (p. 34.), for $6,545.86 and costs. Execution issued October 26th, 1868, and was levied by the marshal on the shares of stock in question, by serving notice of such levy on E. Cook, secretary of the railroad company at its office, in the city of Davenport, and on the clerk of the Board of Supervisors of the county, October 31, 1868. And after due notice, the marshal sold the stock to complainant, December 23d, 1868, and executed to him a certificate of sale, conveying to him the stock. (Marshal's return, with copies of notices of levy, pp. 36–37. Certificate of sale, p. 28.)

The original decree in the Howard suit appropriating the fund intended to have been distributed to the stockholders, to the payment of creditors of the railroad company, is in evidence (p. 20), being the same decree affirmed in this court, 7 Wall. 392. (For the further history of said decree, see "In the matters of Howard, 9 Wall. 175; McCullum *et als*, vs. Howard *et als*, [unreported] decided in this court December term, 1870).

The circuit court, after hearing made a decree in favor of complainant, as prayed in the bill, (p. 38.)

As matter of form, both defendants joined in appealing; but the appeal is not prosecuted by the railroad company, as appears from the following paper which has been filed in this court, by its solicitor and counsel below.

Copy.

Supreme Court of the United States.

October Term, 1874.

The Mississippi & Missouri Railroad Company, and the County of Muscatine,
Appellants,
vs.
Charles T. Cromwell,
Appellee.
No. 262.

Appeal from the United States Circuit Court for Iowa.

In this case, although as matter of form, the Mississippi & Missouri Railroad Company joined in the appeal, it has no longer any beneficial interest in the matter in controversy, and therefore no argument is made on its behalf.

JAMES GRANT, *for M. & M. R. R. Co.*

We presume that the learned counsel, who argue "for appellants," and who appear in the cause for the first time in this court, do not mean to claim that they are retained or authorized to appear for the railroad company.

ARGUMENT.

I.

It will be convenient in the outset to call the attention of the court to certain statutes of Iowa bearing materially on the case.

The Mississippi & Missouri Railroad is alleged in the bill, and admitted in the answers, to have been organized in 1853, under chapter 43 of the Iowa code of 1851 (chapter 52 of Revision of 1860), entitled "corporations for pecuniary profit." The state constitution has always prohibited the creation of private corporations by special act. Section 692 of the code (2169 of the Revision) being a part of said chapter is as follows:

"The transfer of shares is not valid except as between the parties thereto, until it is regularly entered on the books of the company so far as to show the names of the persons by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer."

"The books of the company must be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items in this section are concerned, shall be subject to the inspection of any person desiring the same."

Chapter 159, laws of 1862 (p. 184), provides as follows:

SEC. 1. The secretary and treasurer, or assistant treasurer, and general superintendent of each and every railroad company now or hereafter organized under the laws of this state, elected after the passage of this act, shall reside in the state of Iowa."

"SEC. 2. That the offices of secretary, treasurer, or assistant treasurer, and general superintendent of every such railroad company shall be established and kept within this state, at the place designated in the charter as the general business office of such company; at which office or offices the original record,

stock, and transfer books, and all the original papers and vouchers necessary to such company shall be kept."

SEC. 6. "The board of directors of any such railroad company may establish in any other State a transfer office, in which shall be kept a duplicate transfer book, but in no case can a transfer of shares of stock in such company be in force or binding until the same is entered in the original transfer book, in the office in this State."

The statute as to levying executions on stock in corporations is as follows: —

SEC. 3269 (Revision of 1860, in chapter on "Executions"). "Stock or interests owned by the defendant in any company, and also debts due him, and property of his in the hands of third persons, may be levied upon in the same manner provided for attaching the same."

SEC. 3272. "Bank bills, and other things in action, may be levied upon and sold, or appropriated as hereinafter provided, and assignments thereof by the officer shall have the same effect as if made by the defendant, and may be treated as so made."

SEC. 3194 (in chapter on "Attachment"). "Stock or interest owned by the defendant in any company, and also debts due him, or property of his held by third persons, may be attached, and the mode of attachment must be as follows: 1. By giving the defendant in the action, if found within the county, and also the person occupying or in possession of the property, if it be in the hands of a third person, notice of such attachment. 2. If the property is capable of manual delivery, the sheriff must take it into his custody, if it can be found. 3. Stock in a company is attached by notifying the president

or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock has been so attached."

These enactments were strictly complied with in the proceedings now in question, as appears from the record.

II.

The defense, and the only one, set up in the answers, viz: a pledge of the stock to the railroad company to secure it on its guaranty, is utterly overthrown by the proofs.

It appears that long before the levy on the stock, the railroad company having originally held the one thousand five hundred shares in the name of their treasurer, in trust, for such security, had voluntarily surrendered their lien, by causing the stock to be transferred into the county's name on their books, and issuing it a certificate therefor; since which time the stock appears to have been at the disposal of the county, like any other holder's. The certificate was deposited with the trust company by the county, for its own benefit, and receipted for to it alone, and this through the agency, in part, of the secretary of the railroad company, clearly showing that the company had no interest in the matter.

As to the additional two hundred and fourteen shares, the railroad company never, from the first, had any pledge or lien upon them. They always stood in the county's name, and were subject to its control.

Counsel for appellants, however, appear to ignore these facts, and insist in their argument that the railroad company has a lien on the stock for its security: upon what ground, we are at a loss to understand. The cases they cite (*Brent* v. *Bank of Washington*, 10 Pet., 596, and others,) are cases where

the corporation had, by express terms of its charter, a lien on the stock of any shareholder for any indebtedness from him to the corporation, which could not be defeated by a sale of the stock by the holder, or under execution against him. In such case, a purchaser of the stock takes it *cum onere*. The case cited from 17 Michigan, 141, and specially relied on, is one of this class, in which plaintiffs bought the stock at execution sale, the holder having previously conveyed it by an assignment of which, though not made on the books of the company, plaintiffs had notice. The holder was, moreover, indebted to the corporation in an amount equal to the full value of the stock. Plaintiffs, after their purchase, demanded a transfer to them on the books without offering to pay this debt, which was refused, and the corporation then proceeded to advertise and sell the stock at auction, to enforce their lien, as provided by the charter, and had it bought in by their president for their benefit, and issued a certificate to him. This stock was afterwards cancelled, and on the faith of this the remaining stock, to a large extent, changed hands by purchase. After all this had been done, some four years after the sale, and when the stock had greatly risen in value, plaintiffs brought their bill to redeem from the debt to the company, and to compel a transfer of the stock to them. It is not strange that against this accumulation of obstacles they did not prevail.

A corporation has no lien upon the shares of its stock for any demand it may have against the holder, unless it be given by statute, by-law, or express contract. This has been expressly held, and is plain enough on principle.

Steamship Dock Co. v. *Heron*, 52 Penn. St., 230.
Bates v. *New York Ins. Co.*, 3 Johns. Cases, 238.
Ang. & Ames on Corp., Sec. 569.

In this case there is no statutory lien and no vestige of evidence of any lien by contract, independent of the actual retention of the stock in the name of the company's treasurer. When it was transferred to the county this lien was released, and was doubtless intended to be. Otherwise, the transaction is inexplicable. Anybody would so understand it. See *Hill* v. *Pine River Bank*, 45 N. H., 300, where the bank was held to have waived its lien on stock for the debt of the holder, by permitting a transfer on the books and issuing a certificate to the transferee. See, also, *Mandlebaum* v. *N. A. Mining Co.*, 4 Mich., 465. The county might have sold the stock, and the purchaser would clearly have acquired a good title. The company, having clothed the county with all the usual indicia of absolute ownership, could not be allowed to set up a secret lien or equity (if they had one as against the county), to defeat the title of a purchaser without notice. A very late English case, *Regina* v. *Shropshire Union Co.*, Law Rep. 8 Q. B., 420, is strongly in point. In that case, stock was registered in the name of a director of the corporation, and certificates therefor were issued to him, but in fact he held it as trustee for the corporation. He transferred the certificates as security for a loan to himself, the lender having no notice of the trust. The company refused to allow the stock to be registered in the name of the assignee. He was held entitled to a peremptory mandamus to compel them to do so; and Cleasby, B., delivering the judgment of the Exchequer Chamber, reversing that of the Queen's Bench, says (p. 442): "The great feature of the present case is the improper handing over by *the cestui que trust himself* of the indicia of property, which imported that, as against the company (the *cestui que trust* in this case), the holder had an indefeasible title; and Mr. Robson having acted upon them as such, the defendants cannot, under the circumstances of this case, separate their character of company from that of *cestui*

que trust, and say that though the certificates are conclusive against them as company, they can defeat them in their character of *cestui que trust*."

The same doctrine has been applied in this country as against a shareholder who has placed his stock certificate, with an assignment thereof in blank, and power of attorney to transfer on the books, in the hands of a third person, thus clothing him with all the indicia of ownership; and it has been held that he could not set up a trust or equity existing in his favor against the party thus clothed with apparent ownership, as against a *bona fide* purchaser from such party.

Kortright v. *Com. Bank*, 22 Wend., 348.
McNeil v. *Tenth National Bank*, 46 N. Y., 325.
Crocker v. *Crocker*, 31 N. Y., 507.

The principle of these decisions is as applicable to the case of a purchaser under execution against the apparent owner, as to one claiming under a voluntary transfer from him.

And this leads directly to the notice of a kindred rule, well established by decision, and growing out of the statute heretofore referred to, providing that transfers of shares not made or evidenced on the corporate books, *shall not be valid except as between the parties thereto.*

It has been often decided that under such a statute, a purchaser of stock under execution against the party in whose name it stands on the corporate books, will obtain a good title as against a prior purchaser from such party by transfer of the stock certificate, or other unregistered assignment. The statute has the same effect upon transfers of corporate stock as the recording acts have upon conveyances of land. The purchaser, whether by private contract or at judicial sale, may rely on the title appearing of record, unless he has actual notice of an unrecorded conveyance.

We cite the following cases which are directly in point: —

Fisher v. *Essex Bank*, 5 Gray, 373.
Rock v. *Nichols*, 3 Allen, 342.
Blanchard v. *Gas Co.*, 12 Gray, 213.
Boyd v. *Rockport Mills*, 7 Gray, 406.
Skowhegan Bank v. *Cutler*, 49 Maine, 315.
Pinkerton v. *Railroad Co.*, 42 N. H., 424.
Dutton v. *Conn. Bank*, 13 Conn., 451.
Shipman v. *Insurance Co.*, 29 Conn., 253.
Northrop v. *Turnpike Co.*, 3 Conn., 551.
Agricultural Bank v. *Burr*, 24 Maine, 256.
Naglee v. *Pacific Wharf Co.*, 20 Cal., 529.
Williams v. *Mechanics' Bank*, 5 Blatch. C. C., 59.

In *Fisher* v. *Essex Bank*, *ubi supra*, the subject is examined at length by Shaw, C. J., and the rule above stated is forcibly vindicated. This is a very strong case, and is particularly commended to the attention of the Court.

The same doctrine is recognized in this Court, in *Black* v. *Zacharie*, 3 How., 483 (513), though in that case the attaching creditor having had actual notice of the unrecorded transfer, it was held to be good against him.

The language of the Iowa statute is much more explicit than those under which many of the foregoing cases arose, and cannot possibly be held to be for the benefit of the *corporation* only. It is plainly intended for the protection of purchasers of stock.

"An attaching creditor is not bound to look beyond the books of the corporation to ascertain whether his debtor has made an assignment of the stock standing in his name. The books of the corporation are the appropriate place to determine the ownership of its stock."—*Per* WAITE, J., in *Dutton* v. *Conn. Bank*, 13 Conn., 451, cited and approved in *Shipman* v. *Insurance Co.*, 29 Conn., 253.

"All persons unaffected with notice to the contrary, are at liberty to act upon the faith of the title being where it appears upon the books of the corporation to be."—*Per* REDFIELD, J., in *Sabin* v. *Bank of Woodstock*, 21 Vt., 362.

"You cannot look further, nor is it the practice ever to attempt to look further, than the bank books for the title of the person who proposes to transfer to you."—*Per* BEST, C. J., in *Davis* v. *Bank of England*, 2 Bing., 393.

Unquestionably the legal title to the stock was in the county. On the company's books this title appeared to be absolute. The doctrine of these cases is surely as applicable to the case of a mere latent equity, not evidenced by any written transfer, as to an unrecorded assignment which as between the parties conveys full title.

This defense, moreover, is available only to the railroad company, and is urged as such. But the railroad company, though it has joined formally in the appeal, now disclaims any interest in it, and virtually waives it, so far as concerns itself. It is for the county's benefit only that the case is litigated. (See the written statement filed by ~~its~~ R. R. Co's counsel in this Court, copied *ante*.) Moreover, the execution was against *both* the county and the railroad company. Why did not the levy and sale operate to pass the interest of both or either? The judgment, moreover, was on the very guaranteed bends as security against which it is claimed the stock was pledged to the railroad company. How, then, could the railroad company, if it were disposed to do so, set up this defense?

as this ob- concerned.

It is expressly admitted by appellant's counsel, that the county's interest passed by the sale. Hence, if this objection were well founded, it would only require a modification of the decree so as to save any lien of the railroad company. This

would practically neither benefit the appellants nor prejudice the complainant, except so far as it might affect the costs of appeal.

It is said by appellant's counsel, under this head, that "appellee has never paid a dollar, never has parted with any consideration." There is no foundation in the record for this statement, nor is it true in fact. He paid the amount of his bid, which, it is true, was not a large sum. As to any supposed "equities" growing out of its smallness, more will be said hereafter. There is not a particle of evidence in support of the allegation in the answer, made on conjectnre, that complainant was attorney for Harrison, the judgment creditor, and paid nothing for the stock. No connection between him and Harrison appears, other than this: that in 1871, two years after the sale, he was also a judgment creditor of the county, and represented by the same attorneys as Harrison. But if Harrison himself had been the purchaser at sale under his own execution, he wonld not have stood in a less favorable attitude. Such a purchaser is as much entitled as any other to protection against equities of which he has no notice.

Gower v Doheny, 33 Iowa 36.

Wood v. *Chapin*, 13 N. Y., 509 (opinions of Denio, J., p. 519; Comstock, J., p. 521; Hubbard, J., p. 525).
Mann's Appeal, 1 Penn. St., 24, 29.
Waldo v. *Russell*, 5 Mo., 387, 393.
Den v. *Richman*, 1 Green (N. J.), 43, 53.
Ohio Life Insurance Co. v. *Ledyard*, 8 Ala., 866, 871.
Scribner v. *Lockwood*, 9 Ohio, 184.
Evans v. *McGlassen*, 18 Iowa, 150.
Wallace v. *Bartle*, 21 Iowa, 97.
Walker v. *Elston*, 21 Iowa, 529.
Wood v. *Moorhouse*, 1 Lans. (N. Y.), 405, 412.
2 Leading Cases in Equity (3d Am. ed.), 110, 111.

In such case, the expenses of the sale have to be advanced in cash, and the balance of the purchase money is applied to satisfy the judgment, *pro tanto*, which is a valuable consideration.

III.

The defense of a pledge of the stock to the railroad company has been discussed at so much length, because it is the only one set up in the answer, or urged in the Court below. The other points will be more briefly disposed of.

1. It is urged that the levy on the stock was not effectual, because the stock *certificates* were out of the State, and were not seized.

This is in flat contradiction to the State statute as to the mode of levy, above set forth. It is not the *certificates* that are the subject of the levy; it is the *stock* itself — *i. e.*, the stockholder's right, interest, or "share" in the property and franchises of the company. This is an intangible thing — a chose in action, and at common law not subject to execution.

Angell & Ames on Corp., Sec. 588.

It has generally been made so, however, by statute, which usually provides the mode of seizure, as does the Iowa statute. The *certificate* issued to the shareholder is not itself property, and liable to levy. It is the mere written *evidence* of his title, and not the best evidence, that being found in the books of the corporation. It might as well be urged that a debtor's land could not be levied on and sold, because his title-deeds were out of the State. This objection would nullify the law subjecting corporate stock to execution, for it is hardly ever possible to seize the certificates, which the debtor may put in his pocket. In all the cases heretofore cited as to the validity

of execution sales of stock as against prior transfers of certificate, this point is necessarily decided against the appellant. In some of them it directly appears that the certificates were in the hands of parties in other States.

Fisher v. *Essex Bank*, 5 Gray, 373.
Williams v. *Mechanics' Bank*, 5 Blatch., 51.

"A person becomes legally entitled to shares by having them transferred to him on the books of the bank. The certificate is but additional evidence of his title. * * * * The sale by an officer would transfer the title without regard to any certificate which the owner might hold."

Agricultural Bank v. *Burr*, 24 Me., 263.

"Certificates of stock are not securities for money in any sense, much less are they negotiable securities. They are simply the muniments and securities of the holder's title to a given share in the property and franchises of the corporation of which he is a member."

Mechanics Bank v. *N. Y. & N. H. Railroad Co.* 13 N. Y. (3 Ker.) 627.

In *Miller* v. *United States*, 11 Wall., 268, a case arising under the United States confiscation act, this court held that shares of stock in a railroad company were duly "seized" by the marshal, by notifying the president of the company of such seizure, and that in the absence of any statute prescribing the mode of seizure. The certificates were doubtless in the shareholder's hands, somewhere in the rebel states. (See page 297.)

2. It is said that the railroad company had two offices, one in Iowa and one in New York; "that the certificates of stock in question were issued at the office in New York, and transferred on the books there when assigned; and as matter of fact were in New York when the alleged levy was made," etc.

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It does appear that the company had a transfer office in New York, and that these certificates were issued at that office. This is immaterial to the case. The company was an Iowa corporation. There was its domicil, its road, and other tangible property, and there was the *situs* of its stock for jurisdictional purposes. The relations between the home office and the New York office are fixed by the statute of 1862, already set forth *ante*, and passed long before the levy in question. The New York office was merely "ancillary," and for convenience. The main stock and transfer book, those recognized by the law as governing and evidencing the title to the stock, are required to be kept at the home office, and the stock stood to the credit of the county on those books, in the hands of the secretary, required by law to reside in Iowa. It is clear that in a conflict between a levy on the stock in Iowa, and one in New York, the former must prevail. Indeed, we do not believe that under any circumstances the stock could be effectually levied on or sold in New York, so as to give good title.

In *Pinkerton* v. *Manchester &c. R. R. Co.*, 42 N. H. 424, stock in a New Hampshire railroad company was transferred at the company's transfer office, at Boston, Massachusetts, and a new certificate there issued to the transferee. On the same day, but at a later hour of the day, the stock was attached in New Hampshire by a creditor of the original holder, and it was held that the attachment was good as against the transferee. This case arose under statutes similar to, but less explicit than, the Iowa legislation above referred to.

3. A great deal is sought to be made of a very small matter, viz: the over-payment, through mistake, of the Harrison judgment on its final settlement, January 6th, 1871, which was rectified on its discovery. (See statement of facts, p. 30.)

A wrong impression is conveyed in appellant's statement about this. The payment was made, not before, but shortly *after* the commencement of this suit; and there is no room for the idea apparently implied in the opposite argument, that the sale was voluntarily abandoned, and that the subsequent giving credit for it was an afterthought, concerted in order to pave the way for this suit. There is more color for suggesting that the county officers, having just been served with subpœna herein, made haste to pay off the Harrison judgment, and purposely ignored the execution sale in stating the amount due (p. 29), in order to manufacture an *ex post facto* defenee to this suit; for it is certainly the business of the debtor, rather than the creditor, to see that he pays no more than is due. But in fact it was a mere mistake, and when discovared was set right by mutual agreement, as appears in the statement which constitutes the only evidence of the transaction. Appellants having chosen to put this statement in evidence under our consent annexed, cannot be permitted to impugn it in any particular, but must take the facts as therein set forth. Then, as to the law of the matter; by the marshal's return on the execution, showing so much made and paid over to plaintiff's attorneys, the judgment became so far satisfied of record. It could not be revived nor the sale nullified even as between the parties by a subsequent overpayment of the balance; much less could the title of the complainant, a third party, to property purchased at the sale two years before, be thus overturned. Suppose the marshal had levied on and sold land, and made a deed to the purchaser, would his title be at all affected by this after-payment? The amount overpaid was, in law, not paid on the judgment, but was money had and received by the plaintiff to the county's use, and might have been recovered back by action.

No notice is taken of this matter in the answer, as ground of defence or for any purpose. It seems to have put in evidence at the hearing, as a make-weight. It was irrelevant to the issues and might have been properly struck out, had complainant's counsel thought it worth while to move to do so. The stipulation under which it was put in, reserves all objections to relevancy or competency (p. 30).

4. The fourth point made by appellant's counsel seems to be founded partly on the idea already refuted, that the stock *certificates* were the subject of the levy and sale, and partly on a misapprehension of the relief prayed for by complainant and granted by the decree. The suit was brought to establish complainant's title to the *shares of stock* purchased by him as against the two parties defendant. Nothing more has been decreed to him. If the stock is worthless and entitles the holder to nothing, so much the better for the county, which in that case gets something for nothing. Nothing is decreed against the Union Trust Company, which is not made a party, and could not be, owing to jurisdictional difficulties. It appears to be a mere depository of title papers, and is not claimed to have any interest. It is wholly unnecessary, on this appeal, to consider what emoluments or advantages, if any, will accrue to complainant by reason of his ownership of the stock.

5. It is urged that the marshal's sale was void, because not made in conformity with the Iowa law for appraisement of property sold under execution.

This law, forbidding such sales for less than two-thirds the appraised value, was enacted in 1860, six years after the issuing of the bonds on which the judgment was recovered, as shown on the face of the record. (See Revision of 1860, p. 610, section 3360, *et seq.*)

It is surprising that the learned counsel have thought it worth while to take this objection. The supreme court of Iowa, in 1860, almost immediately after the passage of the act, decided it to be unconstitutional and void as to prior contracts, following the well-known decisions of this court in—

Brunson v. *Kinzie*, 1 How., 311.
McCracken v. *Hayward*, 2 *Ib.*, 708.
Guntley's Lessee v. *Ewing*, 3 *Ib.*, 707.
Howard v. *Bugbee*, 24 *Ib.*, 461.

See *Rosier* v. *Hale*, 10 *Iowa*, 470, reaffirmed in *Landis* v. *Abraham*, 11 *Ib.*, 284. *Maloney* v. *Fortune*, 14 *Ib.*, 417.

Of these decisions the distinguished counsel for appellant, (both of whom then adorned the bench of that court) may each say with entire justice, "*Quoruu magna pars fui.*" The opinion of Mr. Justice Lowe, in *Rosier* v. *Hale*, after an able examination of the subject, and reference to the authorities in this and other courts, concludes thus (10 Iowa, p. 488): "We desire to be understood as simply overruling this motion" (to set aside an execution sale, because not made under appraisement), "upon the ground that the appraisement law in question cannot constitutionaly apply to prior contracts." Such has ever since been the settled law in the courts of Iowa, as it is in this court.

No special directions are ever given by the writ of *fi. fa.* on a common law judgment, as to the mode of levy or sale. The officer is simply directed to cause to be made of the goods, chattels, or lands of the defendant, the amount of the judgment. As to the mode of proceeding, the officer governs himself by the law applicable to the case, of which he must take notice. If he has in fact acted rightly, his acts cannot be set aside, because the precept in his hands did not specially instruct him how to act, or because in other cases, under a similar writ, a different course would be required.

By the rules of the circuit court for Iowa, in force at the time, the state laws of procedure were adopted "so far as applicable and consistent with the laws of the United States and on the decisions of the supreme court of the United States," and the execution laws in particular, "so far as applicable and consistent with the laws of Congress." (See 1 Dillon C. C. Rep., appendix, pp. 597, 8.)

6. If we rightly understand the last point made for appellant, it is that our remedy is at law, and not in equity.

This objection was not taken, in any form, in the Court below, either by answer or otherwise. Defendants submitted their case there on the merits. A decree against them having been made, after hearing on the merits, it ought not be reversed in this Court, merely on this objection, unless the intrinsic nature of the case be such as a Court of equity under no circumstances can deal with.

Magee v. *Magee*, 51 Ill., 500.
Dodge v. *Wright*, 48 *Ib.*, 382.
Hickey v. *Forristal*, 49 *Ib.*, 255.
McDonald v. *Crockett*, 2 McCord Ch., 130.
Wilson v. *Cheshire*, 1 *Ib.*, 233.
King v. *Pagan*, 18 Ark., 583.
Wylie v. *Coxe*, 15 How., 420.

But the objection could not have been successfully urged at any stage. No doubt an action on the case will lie against a corporation for wrongfully refusing to transfer stock on its books. But of what avail to bring such action against an insolvent company, which (as said by Mr. Justice Swayne of this very company, 16 Wall., 451,) "has been stripped of all its property and effects, and only cumbers the ground?" Obviously there is no *adequate* remedy at law against the railroad company, and there is no remedy *at all* against the county.

It is sought by this suit to settle the question of the title to this stock between the conflicting claimants, viz: the complainant and the county. They are the substantial parties: the railroad company is a mere shadow. A suit in equity is not only a proper, but the only effectual, remedy under the circumstances of this case.

The jurisdiction of equity to compel a corporation to transfer stock on its books to the party entitled thereto, was expressly sustained in this Court in *Mechanics' Bank of Alexandria* v. *Seton*, 1 Pet., 299 (305). To the same effect is *Hill* v. *Rockingham Bank*, 44 N. H., 567. And in other cases this jurisdiction has been exercised and relief granted, without question.

Shipman v. *Ætna Insurance Co.*, 29 Conn., 245.
Stebbins v. *Phœnix Insurance Co.*, 3 Paige, 350.
Pollock v. *National Bank*, 7 N. Y., 274.
McNeil v. *Tenth National Bank*, 46 N. Y., 325.
Doloret v. *Rothschild*, 1 Sim. & Stu., 590.

IV.

All the points urged by the opposite counsel as grounds for reversal have now been replied to. But it is suggested in the course of their argument, apparently *in invidiam*, to incline the Court against the complainant, that he bought the stock for a very small sum, and, if his purchase is sustained, will realize an immense profit, put by the learned counsel at $32,000.

The defense of inadequacy of price (supposing it could be a defense to a judicial sale) is not made in the case; and this statement of the learned counsel finds no support in the record. That discloses a purchase of stock in a company confessedly insolvent, stripped of every vestige of property, and with the last remnant of its assets contended for by a swarm of hungry creditors, and locked up in a chancery suit which bid fair to

last as long as *Jarndyce* v. *Jarndyce*, successive sets of claimants having the right to come forward, one after the other (as held by this Court *in re Howard*, 9 Wall., 175), and litigate over and over the title to the fund. It is impossible to say upon this record that the stock had any real value at the time of the sale or since; and, according to the argument of the learned counsel, under their 4th point, it was and is utterly valueless.

But if it shall turn out that Muscatine county loses anything of value in this stock, she will have nobody to blame but herself, and is entitled to no sympathy whatever. There is no pretense of any trick or concealment in the sale. It was an open, public, judicial sale, made under a levy of which the county had very full and particular notice in writing — more full and particular than the law required. The county officers chose deliberately to disregard it, as they had previously disregarded the judgment. They neither paid the judgment nor took any measures to protect the interests of the county at the sale. This was all done in pursuance of their persistent attempt to repudiate the bonded debt of the county, and set its creditors at defiance — an attempt in which Muscatine county (without the excuse which others had in the failure to build the railroads in aid of which they had issued bonds) obstinately persisted till long after the date of this sale, in spite of the repeated decisions of this Court, entailing upon the bondholders an amount of expense, vexation, and delay in enforcing their rights for which the law affords no satisfaction. (See *Lansing* v. *County Treasurer*, 1 Dillon C. C R., 522; *Muscatine* v. *Railroad Co.*, *ib.*, 536.) The disregard of this levy on and sale of the railroad stock was a part of this settled policy, based on a denial of the validity of the subscription for the stock for which the bonds were issued. To have publicly asserted or recognized the county's interest in the stock would have been

an abandonment of this ground, and inconsistent with the position assumed and persistently adhered to. In a word, the county deliberately staked all upon the success of this policy; and it is no more than right that it should abide the event of the cast. It will be a wholesome result if this case shall serve to inculcate the lesson that the ways of repudiation are not, in the long run, paths of plesantness and peace.

This cause was fully heard in the Court below, before both judges, and, after full consideration, a decree was made for complainant. It devolves upon the appellant to show error in this decree. It is submitted that none is shown, and that there should be an affirmance, with costs.

JOHN N. ROGERS,
Counsel for Appellee.

Supreme Court of the United States.

THE MISS. & MO. R. R. CO. *et al.*
APPELLANTS.

vs.

CHARLES T. CROMWELL.

ADDITIONAL BRIEF FOR APPELLEE.

Some points in appellant's reply, not distinctly made before, seem to justify a brief rejoinder.

1. The reference in the notice of levy on the stock to the numbers of the certificates (which were shown by the company's books), is simply for more specific identification of the shares levied on, and there is no color for the idea that by reason thereof a levy was intended on the *certificates*. The proceeding was plainly under the Iowa statute, as to levying on corporate stock, quoted on page 10 of our former argument. That stock certificates are mere evidence of title, and not in themselves valuable securities, like negotiable paper, is shown by the authorities, cited on page 19 of our first brief. Appellants cite none to the contrary.

2. It is said that equity has no jurisdiction to compel the R. R. Co. to transfer the stock, while certificates are outstanding in the hands of third parties.

The certificates are "outstanding" in the hands of the Trust Co. as a mere bailee or depositary of the county. This appears by the company's receipt and the testimony of the president. They are not in the hands of any one claiming an interest in them, by assignment from the county, or otherwise. Somebody must have the custody of them. If they were in possession of the county officers, must they be made parties? If the outstanding certificates must always be produced, in order to compel a transfer, the rights of the purchaser under execution cannot be enforced. Besides, this objection is available only to the R R. Co., which now disclaims all interest.

3. We submit that it does *not* appear that the only transfer book was kept in New York. There is no evidence of any such fact, and a violation of the law is not to be presumed. Nor is it true that the company had ceased to exist when the levy was made, although its road had been sold to another party. Its corporate existence, and the rights of its stockholders in its assets still continued.

4. On page 11 (point 5) of appellant's first brief, it is said, "By his" (appellee's) "purchase at the execution sale, he got only the debtor's (the county) interest." This is what was referred to in our statement (objected to by appellant's counsel), that it was admitted by them for the purpose of that branch of their argument, that the county's interest passed by the sales.

5. "The remainder of the $50," for which the stock was sold by the marshal, instead of being "in the pocket of the appellee or of his counsel," as suggested by the learned counsel for appellant, was simply the amount of the mar-

shal's costs on the execution, viz: $32.98, and retained by him as such. (See return on execution, p. 35, at foot, and receipt of Pltff's attorney to marshal, p. 37.) Nor does it appear that only $15.33 was credited to the county on account of the error in over payment. It is stated (record, p. 30) that the error "consisted *in part* in omitting to credit the county with the amount made by execution sale," etc; and that "the *surplus paid by mistake* on said judgment was by mutual consent applied," etc. If the learned counsel had paid close attention to the record, they would not have made the above statement.

The counsel pertinaciously insist on valuing this insolvent railroad stock at $32,000, and enlarging on the enormity of the appellee's claim by reason thereof, without either evidence or allegation in the record to support the statement. This is a matter, it seems, of which the court is desired to "take judicial notice," as a "predatory incursion on its conscience." We have looked in vain in the books for this particular kind of matter judicially noticed. We suppose the case must be determined *secundum allegata et probata*; and we beg leave again to invite attention to *the issues made in the record.* If defendants desired to set up inadequacy of price, as a ground of objection to the sale of the stock, they should at least have pleaded and proved it. Having not only failed to do either, but having expressly admitted the allegations of the bill, showing the company to be insolvent and the value of the stock (if it had any) to be utterly speculative and uncertain, they cannot now, in a court of appeal, avail themselves of any such defence.

6. The R. R. Co. did *not*, at the time of the levy of the execution, hold the stock in trust, nor at all. This was shown at length in point II of our former argument (pp. 11—18) to which *no answer* is made. But supposing the orig-